TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 227.

MARCELLUS A. LANDER, AS TREASURER OF CUYAHOGA COUNTY, OHIO, APPELLANT,

vs.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED JANUARY 12, 1901.

(18,019.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 2, 1901.

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1 *Transcript of Record.*

In the United States Circuit Court of Appeals for the Sixth Circuit.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Appellant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Appellee.

Supplemental Statement of Parts of the Transcript which Appellant Desires Printed.

The appellant hereby states that the portions of the record which it desires printed as stated in its statement heretofore filed, are included in the following portions of the transcript in the cause, to wit:

1. All of volume 1.
2. Page- 246 to 375, inclusive, of volume 2.
3. Pages 113 to the last page, inclusive, of volume 3.

NORTON P. HORR,
Of Solicitors for Appellant.

Cleveland, Ohio, February 7, 1900.

The appellee has received a copy of the foregoing supplemental statement this day.

P. H. KAISER,
Solicitor for Appellee.

No. 817. U. S. circuit court of appeals. Mercantile National Bank *vs.* R. S. Hubbard, treas. Supplemental statement of parts of record to be printed for appellant. Filed Feb. 8, 1900. Frank O. Loveland, clerk.

2 In the United States Circuit Court of Appeals for the Sixth Circuit.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Appellant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Appellee.
No. 817.

Statement of Parts of the Transcript which the Appellee Desires Printed.

The appellee hereby requests that the following portions of the record be printed as included in the transcript in said cause, to wit:

1. All of volume one.

2. All of volume 2, except pages 153 to 244, inclusive.
3. All of volume 3.

P. H. KAISER,
County Solicitor.
F. L. TAFT,
Ass't County Solicitor.
J. M. SHEETS,
Attorney General.
SMITH W. BENNETT,
Of Counsel for Appellee.

Cleveland, Ohio, Feb. 9th, 1900.

Counsel for appellant acknowledges the service upon them of a copy of the foregoing statement, the day and year above written.

NORTON P. HORR,
Of Counsel for Appellant.

817. Appellee's statement of parts of the record to be printed. Filed Feb. 13, 1900. Frank O. Loveland, clerk.

UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

Record of the proceedings of the circuit court of the United States within and for the eastern division of the northern district of Ohio, in the cause and matter hereinafter stated, and the same being disposed of at a regular term of said court begun and held at the city of Cleveland, in said district, on the first Tuesday in October, being the 3rd day of said month, in the year of our Lord one
3 thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-fourth, to wit, on the 23rd day of December, A. D. 1899.

Present: The Honorable William H. Taft, U. S. circuit judge, and Augustus J. Ricks, U. S. district judge.

THE MERCANTILE NATIONAL BANK OF Cleveland
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio. } No. 5714. Chancery.

Said action was commenced on the 23rd day of December, A. D. 1897, and proceeded to final disposition at the term and day above written, and during the progress thereof pleadings and papers were filed, process was issued and returned, and orders of the court were made and entered in the order and on the dates hereinafter stated, to wit:

Bill of Complaint.

In the Circuit Court of the United States, Northern Division of Ohio, Eastern District.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} No. 5714.

Bill of complaint.

To the honorable the judges of the circuit court of the United States in and for the northern district of Ohio, eastern division:

1. Your complainant, The Mercantile National Bank of Cleveland, Ohio, now comes and respectfully represents that it is a national banking association incorporated under and by virtue of the act of Congress entitled, "An act to provide for the national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864,
4 and the subsequent amendments thereof, and is established and doing business in the city of Cleveland, in said district and division, and it brings this its bill of complaint against R. S. Hubbard, treasurer of Cuyahoga county, Ohio, a resident of said city of Cleveland, and a citizen of Ohio and of said northern district and eastern division.

2. The plaintiff further represents and avers that its grievances hereinafter complained of arose and are exclusively founded on the violation by the respondent, and by others, whose legal acts he is carrying into effect, of the rights of the plaintiff and of its shareholders accorded to them by section 5219 of the Revised Statutes of the United States securing to said shareholders a restriction of the rate and limit of taxes assessed upon their said shares to that assessed upon other moneyed capital in the hands of individual citizens of the State of Ohio, as will hereinafter fully appear.

3. The plaintiff further represents and avers that it has a capital stock of one million dollars divided into ten thousand shares of one hundred dollars each, all of which is paid up, and for which certificates are outstanding and owned by a large number of persons, most of whom reside in the State of Ohio; that in accordance with section 2765 of the Revised Statutes of Ohio, then and now in force, the cashier of the plaintiff duly reported in duplicate to the auditor of said county of Cuyahoga the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday of May, 1897, together with a full statement of the names and residences of the stockholders therein, and with the number of shares held by each and the par value thereof as required by said statute; that included in said return so made by said cashier was the real estate owned by the plaintiff, returned at

$309,000, which is separately assessed and charged on the tax duplicate of said county, and the tax thereon paid by the plaintiff to the treasurer of said county, the defendant, aside from the taxes set forth in this bill.

4. It says that its cashier also included in said return a statement of the plaintiff's surplus and undivided profits at one hundred and seventy-four thousand five hundred and forty dollars.

It says that said auditor of Cuyahoga county thereupon proceeded, as required by section 2766 of the Revised Statutes of Ohio, to fix the total value of such shares according to their true value in money; that he added the valuation of the plaintiff's surplus and undivided profits to the amount of its paid-up capital stock, deducted therefrom its real estate valued as aforesaid at $309,000, and fixed as the value of the shares sixty per cent. of the remainder, to wit, $519,320, exclusive of the assessed value of its real estate. He then made out and transmitted to the annual State board of equalization for incorporated banks, a copy of the report so made by said cashier, together with the valuation of said shares fixed as aforesaid by said auditor; that said board of equalization professing to act under sections 2808 and 2809 of the Revised Statutes of Ohio, did examine the returns aforesaid made by said cashier to said county auditor and the valuation of said shares as so fixed by said county auditor, and did, on December 6th, 1897, and not before, add to the valuation of such shares the sum of one hundred and twenty-three thousand dollars, thereby fixing the valuation of said shares at $642,320.00, and the auditor of the State of Ohio did certify said valuation to said auditor of said county of Cuyahoga, and said auditor of the said county of Cuyahoga did enter the same upon the tax duplicate of said county of Cuyahoga for the year 1897, and did assess taxes against the same at the rate of 3.03 cents on each dollar's valuation, which was the rate of taxation for the taxes assessed for the year 1897 within said county, city and sewer district, and which amounted on said valuation of shares to $19,462.30. The plaintiff further avers that by section 1042 of the Revised Statutes of Ohio it is made the duty of the auditor of Cuyahoga county, on November 1st of each year, to deliver to the county treasurer a true copy or duplicate of the books containing the tax-list required to be made by him for the year, and by section 2808 of the Revised Statutes of Ohio it is made the duty of the State board for the equalization of the shares of incorporated banks, to meet on the third Tuesday of June annually, at the office of the auditor of State, and then and there examine the returns of banks to the county auditors, and the value of the shares as fixed by the county auditors as the same have been reported by the county auditors to the State auditor; and to hear complaints and to equalize the value of said shares according to the rules prescribed by the statute for valuing and equalizing the values of real and personal property. The plaintiff says that said board for the equalization of the shares of incorporated banks so required to meet on the third Tuesday of June annually for the purpose of making such equalization, did not meet for the purpose of examining

such returns and of equalizing the valuation of shares, until
6 December 6th, 1897, a day long subsequent to the time that the duplicate is, by the statute aforesaid, required to be placed in the hands of the treasurer for the collection of taxes, and a day subsequent to the time the duplicate was in fact delivered to the defendant, and said board then met and without any complaint that the valuation fixed by said county auditor was in any respect wrong, and without notice to the complainant, which the statute requires of their meeting or intended action or to any of the shareholders, made such pretended examination and increase of valuation of complainant's shares; and on complainant's hearing of said action of said board it at once applied to said board for a hearing before them and was by it informed that one could not be had before the 22nd day of December, 1897, a time subsequent to the day on which by the statute one-half of the tax on such valuation is required to be paid, in order to avoid a penalty thereon. Therefore the complainant submits that the said board for the equalization of bank shares had no jurisdiction or power to increase the valuation so fixed by the auditor on the shares of the complainant for the year 1897, and that its action in respect thereof was void and of no effect.

5. The complainant avers that the assessed valuation of its shares so fixed by said State board of equalization and so entered on the tax duplicate of Cuyahoga county against its said shareholders was over seventy-four per cent. of the true value of the money, property and assets so as aforesaid thereby covered; that all other personal property, including moneys on deposit, promissory notes and amounts due and receivable, are and have been for many years assessed for taxation by the taxing officers of the State of Ohio at a rate of not exceeding 60 per cent. of their face or apparent value; that the valuation so as aforesaid fixed by said auditor of Cuyahoga county on this plaintiff's shares of stock was fixed at 60 per cent. of the true value thereof, and that such assessment was in conformity with his uniform practice and the uniform practice of the taxing officers of said county and other counties in the State of Ohio on all classes of investments. The plaintiff further avers that said State board of equalization knowingly and designedly did fix a much higher per centum of valuation and assessment for taxation upon the shares of the plaintiff's capital stock than was assessed upon other moneyed capital in the hands of individual citizens of the State of Ohio, and much higher than that fixed on other moneyed capital in the hands of such citizens in said county of Cuyahoga and said city of Cleveland.

7 6. The plaintiff further represents and avers that although by the second section of the twelfth article of the constitution of the State of Ohio, it is provided that, "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and shall tax all real and personal property according to its true value in money;" and while it is further provided by the third section of the same article that, "all property in banking shall bear a burden of taxation equal to that imposed on the property of individuals," and by the fourth sec-

tion of the thirteenth article of said constitution it is further provided that "the property of corporations now existing or hereafter created shall forever be subject to taxation the same as the property of individuals;" yet the various assessing and taxing officers of the county of Cuyahoga, in which the complainant is situated, including the boards of equalization, auditor and assessors, have uniformly for now more than fifteen consecutive years assessed moneyed capital in the hands of individual citizens of the State invested in securities of all kinds at the valuation of 60 per cent. of the face or apparent value of such credits and investments as the true value in money thereof for their taxation, and all other taxable credits and securities have by said officers been uniformly fixed at 60 per cent. of their face value for purposes of taxation. The plaintiff further says that in and by the act of Congress under which the plaintiff is incorporated the right of the State to tax any owner of the plaintiff's shares is made subject to this condition, "that the taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such State."

7. The complainant avers that by section 2730 of the Revised Statutes of Ohio it is enacted that, "in this title (taxation) the term 'credits' shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or services due or to become due to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this State, other than such as are held to be money, as hereinbefore defined, when added together (estimating every such claim or demand at its true value in money,) over and above the sum of legal *bona fide* debts owing by such person, but in making up the sum of such debts there shall be taken into account no obligation to any mutual insurance company, nor unpaid subscription to the capital stock of any joint stock company, nor any subscription
8 for any religious, scientific, literary or charitable purpose, nor any acknowledgment of any indebtedness unless founded on some consideration actually received and believed at the time of making such acknowledgment to be a safe consideration therefor, nor any acknowledgment made for the purpose of diminishing the amount of credits to be listed for taxation." By section 2736 of the Revised Statutes of Ohio it is provided that every person required to list property for taxation shall deliver to the assessor annually a statement of all personal property, moneys, credits and other property in his possession or under his control on the tax day which he is required to list for taxation, and by section 2737 it is provided that such statement, among other things, shall truly set forth the amount of credits possessed by such person as that term is by the above-recited statutes defined.

8. The complainant further avers that a large amount of moneyed capital in the hands of individual citizens of the State of Ohio invested in promissory notes and other legal obligations, securities, claims and demands, amounting to several hundred millions of dollars, is by the aforesaid provision allowing a deduction of legal *bona fide* debts to be made therefrom, expressly exempted from tax-

ation. It says that there were returned for taxation in the State of Ohio in 1891, $113,943,512, of credits after deducting from the aggregate of credits owned by persons making such returns, their *bona fide* debts as provided by section 2730; that in the year 1892 there was returned of such excess of credits $113,800,000; in the year 1894, $110,877,000; in the year 1895, $106,389,000; in the year 1896, $102,810,000, and in the year 1897, more than a hundred millions of dollars. It says that among the classes of investments of moneyed capital covered by such returns of excess credits were all debts owing for money loaned and secured either by mortgage on real estate, or by pledge of personal property, or wholly unsecured, but owing by responsible persons. Complainant is informed and believes, and therefore alleges the fact to be that the amount of credits held by residents and individual citizens of the State of Ohio, consisting of moneys owned, but secured by pledges of personal property, or unsecured but owed from responsible persons, was more than treble the amount of excess of credits so returned for taxation in each of the years aforesaid; and that at least $200,000,000 of such credits were exempted by the aforesaid provision from taxation. Complainant avers that during each of the years hereinbefore specified there was owed to citizens and residents of the State of
9 Ohio, and secured by mortgage on real estate within the State a sum in excess of $250,000,000, and that all such claims and demands were by virtue of the provision aforesaid of the statute of Ohio, in each of the said years, exempted from taxation. The complainant avers that by act of General Assembly of the State of Ohio, passed May 1st, 1891, entitled, "An act to provide for the organization, regulation and inspection of building and loan associations, and to repeal certain laws therein named," and by section 835 D of the statutes of Ohio, in force prior to the passage of said act of May 1st, 1891, it was enacted that, "the shares and loans advanced to members (of building and loan corporations), shall be exempt from taxation, except shares of stock upon which no loans have been made or money advanced by the company, shall be considered and held as credits, and the said individual members shall list for taxation the number of shares held by them, at the true value thereof, in money on the day preceding the second Monday in April in each year, and the same shall be assessed at such valuation for taxation and taxed as other property." It avers that in each of the years 1891, 1892, 1894, 1895, 1896 and 1897, such building and loan corporations organized under the laws of, and doing business in said State of Ohio, had paid-up capital stock amounting to over $270,000,000; that there was loaned to the members on said stock in each of said years, $70,000,000, which was by said statute exempted from taxation, and that $200,000,000 of said stock, being the amount of stock, less the amount of said loans, was, by virtue of aforesaid provision, required to be listed and assessed as credits from which *bona fide* debts were authorized by said statute, and were, in fact, deducted and exempted from taxation. It avers that such building and loan corporations so organized and doing business were empowered and authorized by statute to borrow and loan money and to do a general

banking business with their members and depositors. The complainant further alleges that in the savings banks alone in Cuyahoga county there is on time deposit an amount exceeding the entire capital of all the national banks in the State, which deposits are credits belonging to the depositors from which legal *bona fide* debts are authorized by the statute to be deducted to ascertain the taxable value of said deposits. The complainant avers that the allowance of these various exemptions from taxation of money capital in the hands of individual citizens of the State, under the laws of the State of Ohio, result in and make an unjust and unlawful discrimination against moneyed capital invested in national bank shares as to which no exemption or deduction is provided by the laws of the State, and which discrimination is in direct violation of the restrictions of section 5219 of the Revised Statutes of the United States. Complainant avers that there was invested in shares of stock of national banks located and doing business in the State of Ohio during each of said years 1891, 1892, 1894, 1895, 1896 and 1897, over and above the value fixed for taxation of the real estate owned by said national banking associations, a sum in excess of $34,000,000, but not exceeding $50,000,000. The complainant avers that the tax lawfully assessed and paid on its shares annually amounts to upwards of twenty per cent. of the income arising from the operations of complainant.

9. The plaintiff further represents and avers that on said day next preceding the second Monday of April, 1897, and at the time the cashier of said plaintiff made his said return to the auditor of Cuyahoga county, Ohio, of the names and residences of the shareholders of said association with the numbers and par value of the shares of the capital stock of the plaintiff for the year 1897, the following-named persons were stockholders of the plaintiff, owning and holding the number of shares set opposite their respective names, which they still continue to own, to wit:

	No. of shares.
J. V. Painter	400
Samuel E. Williamson	50
S. C. Ford	35
Orville L. Jones	62
Truman P. Handy	400
William Bingham	150
R. K. Hawley	50
Wm. G. Mather	70
Edwin R. Perkins	325
L. A. Murfey	40
Chas. L. Murfey	65
W. S. Tyler	250
James Barnett	313⅓
A. L. Withington	30

10. The plaintiff further represents and avers that each of said stockholders was, at the times hereinbefore recited to wit, on the day preceding the second Monday of April 1897, and between the first

and second Monday of May, 1897, indebted and owing to
11 others, of legal, *bona fide* debts, exclusive of obligations to mutual insurance companies, of all unpaid subscriptions to the capital stock of joint stock companies, of all subscriptions for religious, scientific, literary or charitable purposes, of all liabilities as surety, and of all acknowledgments of any indebtedness made for the purpose of diminishing the amount of taxable credits or founded on inadequate or fictitious consideration, a sum, in excess of all credits from which, under the laws of the State of Ohio, he was entitled to deduct said debts to an amount equal to the actual and par value of the number of shares specified opposite their respective names, and which said excess of said debts over said credits as aforesaid, the said shareholders above named were entitled to have deducted from the assessed value of said shares so severally owned by them.

11. The plaintiff further avers that with and accompanying the return so made by the cashier of the plaintiff in said year 1897 there was furnished by said cashier and by said individual stockholders, and each of them, to the auditor of said county proof that they were so respectively indebted in excess of their respective credits in sums equal to or greater than the true value in money of their respective holdings of stock in the plaintiff, and demanded that the same should be deducted from the assessed value of the shares owned by them but the said auditor refused to make such deductions and insisted that the whole of said shares as then assessed should be placed and remain upon the tax duplicate, and the said defendant insisted and still insists upon the payment of the whole of the tax as assessed thereon. It says that the auditor of said county in making the duplicate for the year 1897 refused to deduct and abate said indebtedness and delivered the duplicate without such deduction to the defendant as treasurer of said county, and that said defendant as treasurer threatens and is about to collect by distraint or otherwise, the said taxes on said shares of stock with said deductions disallowed.

12. The complainant further avers that by section 2839 of the Revised Statutes of Ohio, it is declared, that:

"Any taxes assessed on any shares of stock or the value thereof, of any bank or banking association, shall be and remain a lien on such shares from the first Monday in May in each year, until such taxes are paid; and in case of non-payment of such taxes at the time required by law, by any shareholder, and after notice received of the county treasurer of the non-payment of such taxes, it shall be unlawful for the cashier or other officers of such bank or bank-
12 ing association, to transfer or permit to be transferred, the whole or any portion of said stock until the delinquent taxes thereon, together with costs and penalties, shall be paid in full, and no dividend shall be paid on any stock so delinquent so long as such taxes, penalties or costs, or any part thereof, remain due and unpaid."

The complainant says that said defendant further threatens in case of non-payment of said taxes so unlawfully levied and assessed,

to give the notice provided for in said section, and thereby prevent the transfer of any of said shares of stock from said shareholders or any other persons to whom they or either of them may have sold the same. The complainant further avers that if the shares of said shareholders are permitted to be sold under the lien created on them by section 2839 of said Revised Statutes of Ohio, or otherwise, irreparable injury would not only be done to each of the shareholders, but also to the complainant and it would thereby be subjected to great loss of standing, and credit, for the redress of which, the law affords no remedy, and the franchises with which your orator is invested by the act of Congress, as aforesaid, would be greatly impaired in value, and the disability imposed upon the complainant to make transfers, or to pay dividends upon shares, upon which such illegal tax remains unpaid, would injuriously affect all its ordinary business, and introduce confusion and uncertainty into its transactions, and the consequent loss of public confidence, upon which its success depends; and if the complainant should pay said illegal taxes and attempt to deduct the amount from dividends or other funds of the shareholders in its hands, it would be subjected to a great multiplicity of suits brought by its separate shareholders, for so doing, and in any event, a great number of suits would be rendered necessary to adjust the rights of all the parties, and the complainant would be subjected to great expense and irreparable injury thereby.

13. The plaintiff says that by reason of the premises above set forth there should be deducted from the assessment against the plaintiff's shares, now standing on the duplicate of said county, that portion of the assessment represented by the addition so made by the said State board of equalization, to wit: $123,000, together with the taxes assessed thereon at the present rate, for said year, to wit: $3,726.90, and that there should further be deducted and withheld from said duplicate the assessment now standing thereon against the individual stockholders of the plaintiff hereinbefore named, to the extent of their holdings of stock aforesaid, amounting in the aggregate, inclusive of the taxes on the valuation added thereto by said State board of equalization to $4,359.62, and exclusive thereof to $3,524.78; making a total amount in dispute herein over $7,200.

13

14. Plaintiff further represents and avers that on the 16" day of December, 1897, on behalf of the shareholders owning shares of its capital stock it duly tendered to the defendant as treasurer of Cuyahoga county, and offered to pay for the taxes due December 20th, 1897, on said shares, the sum $6,105.31, and is still ready and willing to pay the same as well as the other half of said taxes on the same basis of valuation to fall due on the 20th of June, 1898, if said treasurer will receive — or if this honorable court will so order; but said treasurer has so far refused to receive said payments unless the plaintiff would also pay the half of the whole amount of said tax as it stands on the duplicate.

15. The plaintiff further says that heretofore, to wit, on the 8th day of April, 1887, in an action then pending in this court by this plaintiff against Horatio N. Whitbeck, the predecessor of the de-

fendant as treasurer of Cuyahoga county, to enjoin the collection of taxes assessed against the shares of plaintiff's stock growing out of the refusal of the taxing officers of said county to allow the deductions of *bona fide* debts of individual stockholders from the assessed value of their shares and growing out of the addition to the gross assessment against the shares of plaintiff's stock made by said State board of equalization in addition to the valuation fixed by said auditor, and in which said action it was alleged and proved that the taxing officers of said county, assessed at the time the shares of said plaintiff together with all their personal property listed for taxation in said taxing district at sixty per cent. of their value, exclusive of said addition by said State board of equalization, and in which said action said defendant therein represented the same interest, sustained the same relation, was charged with the same duties to the public as the present defendant, and in which said action the issues made were in all respects the same as those made by this bill of complaint, and were joined by said defendant, the laws of the State of Ohio and of the United States relating to the subject being the same then as now, and now as then, the plaintiff says that this court held, determined and adjudicated that its said shareholders were, by law, entitled to a deduction of *bona fide* debts from the
14 value of their said shares to an equal amount fixed for taxation, and in said action this court gave judgment perpetually enjoining said treasurer and his successors from collecting or attempting to collect the taxes or assessment on the valuation of said shares to an amount equal to said debts from which said deduction was sought to be made on the ground that the disallowance of said deductions by said auditor was a discrimination against money invested in national bank shares prohibited by the aforesaid act of Congress. The plaintiff says that said issue so determined and adjudged was between the same parties, and involved the same subject-matter and that the judgment given therein is wholly unreversed and in full force and operation.

16. The plaintiff further represents and avers that like suits, with like issues, were by it instituted in this court against the respective predecessors of the present defendant, who, at those times, held the office of treasurer of Cuyahoga county, Ohio, in the years 1886, 1888 and 1893, and that upon issue being joined in each of said actions, by consideration of this court judgments were rendered in favor of this plaintiff against said respective defendants on May 14th, 1888, and on September 28th, 1889, and on December 30th, 1893, directing the allowance of said deductions. The plaintiff alleges that the issues so determined and adjudged were between the same parties, involved the same subject-matter and that the judgments therein given are wholly unreversed and still in full force and operation.

17. The plaintiff, now and here, brings into court the sum due to said defendant, as treasurer, for the tax lawfully levied on said shares against its said shareholders and submits the same to the order and direction of this court.

Inasmuch, therefore, as the plaintiff is remediless by the strict rules of law and relievable only in equity, it prays that said R. S.

Hubbard, as treasurer of said county of Cuyahoga, may be made a party defendant to this bill of complaint; and that a writ of subpœna may issue against him, and that he may be required to answer the premises; that the plaintiff may have granted unto it during the pendency of this action a writ of injunction strictly restraining and enjoining the said R. S. Hubbard as treasurer of said county of Cuyahoga, and his successor or successors in office, from collecting or attempting to collect from the plaintiff or from its said individual shareholders named in this bill by distraint or otherwise, any of said taxes as the same now stand charged on the duplicate of said county, including those levied on such unlawful increase of valuation by said State board of equalization for incorporated bank shares, permitting, however, said treasurer without prejudice to his rights in the premises to receive the amounts so as aforesaid tendered by the plaintiff to him; and that said defendant and his successors in office aforesaid may on final hearing be perpetually enjoined from collecting or attempting to collect the taxes aforesaid; and that the plaintiff may have such other and further relief in the premises as equity and good conscience require.

W. W. BOYNTON,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division.

Be it remembered that this 23 day of December, A. D. 1897, personally came before me, L. A. Murfey, who, being by me first duly sworn, deposes and says that he is the assistant cashier of the complainant in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; that all the allegations and statements therein contained, as derived from the information of others, he believes to be true, and all other allegations and statements therein made, are true in substance and in fact.

L. A. MURFEY, *A. Cash.*

Sworn to before me and in my presence subscribed this 23d day of December, A. D. 1897.

[SEAL.]

A. R. HORR,
Notary Public.

Tax fee 40c., p'd by plaintiff.

Endorsements on bill of complaint.

No. 5714. In the circuit court of the United States, northern division of Ohio, eastern district. The Mercantile National Bank of Cleveland, plaintiff, against R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, defendant. Bill of complaint. Filed Dec. 23, 1897. Irvin Belford, clerk U. S. circuit court, N. D. O.—5714. Mercantile National Bank *vs.* R. S. Hubbard, treas. Bill of complaint. Filed Dec. 23, 1897. Irvin Belford, clerk U. S. circuit court, N. D. O.

16 *Subpœna in Chancery.*

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } ss:

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, if he be found in your district, to be and appear in the circuit court of the United States, within and for the district aforesaid, at Cleveland, on the first Monday in March next to answer a certain bill in chancery filed and exhibited in the said court against him by the Mercantile National Bank of Cleveland.

Hereof he is not to fail under the penalty of the law, thence ensuing, and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of December, A. D. 1897, and in the 122nd year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk,*
By JNO. VAN NOSTRAN,
Deputy Clerk.

Memorandum.

The said defendant is required to enter his appearance in this suit, in the clerk's office of said court, on or before the first Monday of February, 1898, otherwise the said bill may be taken *pro confesso.*

IRVIN BELFORD, *Clerk.*

Endorsements on subpœna in chancery when issued.

No. 5714. United States circuit court, northern district of Ohio, eastern division. In chancery. The Mercantile National Bank of Cleveland, *vs.* R. S. Hubbard, Co. treasurer. Subpœna. Returnable February 7, 1898. Rule day for appearance, February 7, 1898. Rule day for answer March 7th, 1898. W. W. Boynton, complainant's solicitor.

Endorsements on subpœna in chancery when returned.

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, *Northern District of Ohio,* } ss:

17 Received this writ on the 23rd day of December, 1897, and on the 27th day of December, 1897, I served the same at Cleveland, on the within-named R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, by delivering to him a true and certified copy thereof.

M. A. SMALLEY, *Marshal,*
By W. S. SNYDER, *Deputy.*

Fees.

Service	$2 00
Travel	12
Total	$2 12

Returned and filed Dec. 28, 1897.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

Order Granting Temporary Injunction.

October term, A. D. 1897, to wit, December 23rd, A. D. 1897.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio. } No. 5714. Equity.

On motion of the plaintiff by its attorney, after due notice to the defendant, and good cause being shown therefor, it is ordered that on an undertaking being given in the sum of $14,600.00 with sureties to the approval of the clerk of this court, a preliminary writ of injunction issue herein, restraining and enjoining said defendant, R. S. Hubbard, as treasurer of the county of Cuyahoga and State of Ohio, and his successors in office, from collecting or attempting to collect from the plaintiff or from its individual shareholders named in said bill, by distraint or otherwise, any of the taxes named in the bill, as the same stand charged upon the duplicate of Cuyahoga county, except that said respondent is hereby given authority without prejudice to his rights in the premises, to receive from the plaintiff $6,105.31 on the taxes due December 20th, 1897, and
18 $6,105.31 due June 20, 1898, being the taxes by said plaintiff's bill, admitted to be justly due from it and its individual shareholders to said defendant, and that said writ remain in force until the further order of this court.

Undertaking in Injunction.

Know all men by these presents, that we, E. R. Perkins, and Chas. L. Murfey are held and firmly bound unto R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, and his successors in the sum of fourteen thousand six hundred dollars, to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 23rd day of December, A. D. 1897.

The condition of the above obligation is such that, whereas the said The Mercantile National Bank of Cleveland, Ohio, citizen of

the State of Ohio, have filed in the circuit court of the United States for the northern district of Ohio a bill in chancery against the said R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, and have obtained an allowance of an injunction, as prayed for in said bill, from the Honorable Augustus J. Ricks, judge of said court.

Now if the said The Mercantile National Bank shall abide the decision of said court, in said cause, and pay all moneys and costs which shall be adjudged against it in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

E. R. PERKINS. [SEAL.]
CHAS. L. MURFEY. [SEAL.]

Endorsements on undertaking in injunction.

No. 5714. U. S. circuit court, northern district of Ohio. No. 5714. The Mercantile National Bank of Cleveland, *vs.* R. S. Hubbard, treas'r. Injunction bond. Approved and filed Dec. 23rd, 1897. Irvin Belford, clerk.

Certified Copy of Order Granting Preliminary Injunction to Marshal for Service.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } *ss:*

19 At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in October, being the 5th day of said month, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-second, to wit, on Thursday, the 23rd day of December, A. D. 1897.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

Among the proceedings then and there had were the following, to wit:

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, Plaintiff, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant. } Equity. No. 5714. Journal Entry.

On motion of the plaintiff by its attorneys, after due notice given to the defendant, and good cause being shown therefor, it is ordered that on an undertaking being given in the sum of $14,600 with sureties to the approval of the clerk of this court, a preliminary writ of injunction issue herein, restraining and enjoining said defendant,

R. S. Hubbard, as treasurer of the county of Cuyahoga, and State of Ohio, and his successors in office, from collecting or attempting to collect from the plaintiff or from its individual shareholders named in said bill, by distraint or otherwise, any of the taxes named in the bill, as the same stand charged upon the duplicate of Cuyahoga county, except that said respondent is hereby given authority without prejudice to his rights in the premises, to receive from the plaintiff $6,105.31 on the taxes due December 20th, 1897, and $6,105.31 due June 20, 1898, being the taxes by said plaintiff's bill, admitted to be justly due from it and its individual shareholders to said defendant, and that said writ remain in force until the further order of this court.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, clerk of the circuit court of the United
20 States, within and for the northern district of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order entered upon the journal of the proceedings of said court in the therein-entitled cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness, my official signature and the seal of said court, at Cleveland, in said district, this 23rd day of December, A. D. 1897, and in the 122nd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk.*

[SEAL.] By JNO. VAN NOSTRAN,
Deputy Clerk.

Endorsements on order when issued.

No. 5714. United States circuit court, northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, Ohio. Certified copy of order.

Endorsements on order when returned.

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

Received this writ on the 23rd day of December, 1897, and on the 27th day of December, 1897, I served the same at Cleveland, on the within-named defendant, R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, by delivering to him a true and certified copy thereof.

M. A. SMALLEY, *Marshal,*
By W. S. SNYDER, *Deputy.*

Fees.

Service	$2.00
Travel	.12
Total	$2.12

Returned and filed Dec. 28, 1897.

IRVIN BELFORD,
Clerk U. S. Circuit Court, N. D. O.

21 *Order of Continuance.*

October Term, A. D. 1897, to wit, January 31st, A. D. 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

MERCANTILE NATIONAL BANK
vs.
R. S. HUBBARD, Treasurer. } Equity. No. 5714.

This cause is continued to the next term of this court.

Order of Continuance.

February Term, A. D. 1898, to wit, April 4th, A. D. 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

MERCHANTS' NAT'L BANK OF CLEVELAND
vs.
R. S. HUBBARD, Treasurer. } 5714. Chancery.

This cause is continued to the next term of this court.

Answer.

Circuit Court of the United States in and for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Plaintiff,
against
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant. } Answer. No. 5714.

Now comes the said defendant, R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, and for answer to the bill of complaint of said complainant, The Mercantile National Bank of Cleveland,
22 filed herein, says: Now and at all times reserving unto himself all benefits and advantages of exception which can or may be taken to the many errors, uncertainties and other imperfections in complainant's said bill of complaint contained, or to so much, or such parts thereof as this defendant is advised is material or necessary to answer unto, answering says:

SEC. 1. That he admits that the complainant, The Mercantile National Bank of Cleveland, is a national banking association incorporated under and by the act of Congress, and that it is doing business in the city of Cleveland, in said district and division, and that defendant, R. S. Hubbard, is treasurer of Cuyahoga county, and a resident of the city of Cleveland, and of said district.

SEC. 2. Defendant denies that he is doing any illegal act, or that he is violating any rights of complainant, or its shareholders as accorded to them by section 5219 of the Revised Statutes of the United States, as alleged in paragraph two of said bill of complaint.

SEC. 3. Defendant admits that the complainant has a capital stock of the amount and divided into the number of shares stated in said bill of complaint, and that said shares are fully paid up as alleged in the bill of complaint, for which certificates are outstanding, but defendant has no knowledge as to whether or not most of the persons owning said certificates reside in the State of Ohio, or as to whether or not the cashier truly reported the names and residences of all the stockholders thereof and the number of shares held by each, as alleged in paragraph three of said bill of complaint, and ask proof thereof; and he denies that the cashier of complainant duly reported to the authorities of the county of Cuyahoga all the resources and liabilities of said banking association.

SEC. 4. Defendant admits that the cashier of complainant included in his return a statement of complainant's alleged surplus and undivided profits of the amounts stated in said bill of complaint; but avers that the same was not the true amount of complainant's actual surplus and undivided profits. And defendant admits that the auditor of Cuyahoga county undertook to add the valuation of complainant's surplus and undivided profits to the amount of its paid-up capital stock and to value the same at sixty (60) per cent. of its true value in money, as he estimated such valuation, and which as estimated amounted to said sum stated in said bill of complaint; and that said board of equalization added the amount stated in said bill of complaint, and the auditor of said State of Ohio did certify said valuation to the auditor of said
23 county of Cuyahoga, and said auditor of said Cuyahoga county did enter the same upon the tax duplicate of said county, and did assess the said stockholders at the rate on each dollar's valuation as estimated, the amount stated therein; but defendant avers, that the auditor was greatly deceived and misled by complainant's statement of the true value of its returns to him for taxation, and that the returns so made did not exceed forty (40) per cent. of the actual value of said property and assets of complainant; when in truth and in fact the said complainant should have returned the same at its true value in money. And defendant avers, that said board of equalization began work at the time the statutes require, and continued its work continuously, but for want of the necessary information it could not complete its work earlier than December 6th, 1897. And defendant denies each and every other allegation in paragraph four in said bill of complaint contained not hereinbefore specifically admitted.

SEC. 5. Defendant denies that the assessed valuation of complainant's shares, as fixed by the State board of equalization, and as entered upon the tax duplicate of Cuyahoga county against complainant's shareholders was over, or equal to sixty (60) per cent. of the true value of the money, property and assets so covered. He denies that all other personal property, including money on deposit, promissory notes and amounts due and receivable, are and have for many years been assessed for taxation by the taxing officers of the State of Ohio, at less than sixty (60) per cent. of their true value. He denies that the valuation was fixed by the auditor of Cuyahoga county at sixty (60) per cent. of the true value thereof, in money, and that said assessment was in conformity to his uniform practice or the uniform practice of the taxing officers of said county and other counties of the State of Ohio, on all or any classes of investments.

Defendant further denies, that said State board of equalization knowingly or designedly, or did in fact, fix a higher per centum of valuation and assessment of taxation upon the complainant's capital stock than was assessed upon other moneyed capital in the hands of individual citizens or other moneyed capital in said State, or in said county of Cuyahoga, or in said city of Cleveland, as alleged in said paragraph five (5) in said bill of complaint.

SEC. 6. Defendant further denies that the assessing and taxing officers of the county of Cuyahoga, or the board of equaliza-
24 tion, auditor and assessors, have uniformly, and for more than fifteen consecutive years, or for any length of time, assessed moneyed capital in the hands of individual citizens of the State invested in securities of all or any kinds at the valuation of sixty (60) per cent. of the true value in money thereof, or that all or any other taxable credits have by said officers been uniformly fixed at sixty (60) per cent. of their face value for the purpose of taxation.

SEC. 8. Defendant denies, that the exemptions and taxations of moneyed capital in the hands of individual citizens of the State, or in State banks, building and loan associations organized under the laws of the State of Ohio, make an unjust and unlawful discrimination against moneyed capital invested in national bank shares in the State. On the contrary defendant avers that the tax levied and assessed against moneyed capital invested in national bank shares, and especially of complainant, is less than is assessed upon the property, of individual citizens and moneyed capital invested in State banks in said county and throughout the State of Ohio.

He denies that the tax assessed and paid on the shares of complainant's stock amounted to upwards of twenty (20) per cent. of the income arising from the operations of complainant; as to the other allegations in paragraph eight the defendant has no knowledge as to the truth or falsity thereof, and denies the same and asks proof thereof.

SEC. 9. The defendant admits that the parties named in section nine (9) in said bill of complaint owned the number of shares of the

capital stock of complainant on the day next preceding the second Monday in April, 1897, alleged in said bill of complaint, and still own the same.

SEC. 10. Defendant denies, that each or either of said stockholders named in paragraph nine (9) were on the day preceding the second Monday in April, 1897, and between the first and second Monday in May, 1897, indebted and owing to others of legal *bona fide* debts exclusive of obligations to mutual insurance companies, of all unpaid subscriptions to the capital stock of joint stock companies, and of all acknowledgments of any indebtedness made for the purpose of diminishing the amount of the taxable credits, a sum in excess of all credits from which under the laws of the State of Ohio, he was entitled to deduct said debts to an amount equal to the actual and par value of the number of specific shares opposite their respective names, and which said excess of said debts were over credits as aforesaid; and he denies that the said shareholders above named were entitled to have deducted any sum whatever from the assessed value of said shares so severally owned by them.

SEC. 11. Defendant further denies, that accompanying the return made by said cashier of the complainant, in said year, 1897, there was furnished by said cashier, and by said individual stockholders, or either of them, to the auditor of said county, proof that they were so respectively indebted in excess of their respective credits in sums equal to or greater than their true value in money of their respective holdings of the stock of complainant; and he denies that any deductions should be made from the assessed value of the above stock owned by them, or either of them. He admits that the auditor of said county refused to make any deductions for complainant or its shareholders, and defendant admits that he is about to collect the taxes that are legally due from complainant.

SEC. 13. Defendant denies, that there should be deducted from assessment of complainant's shares now standing on the duplicate of said county the sum stated in said bill of complaint, or any other sum, or that there should be deducted any sum now standing against the individual stockholders of complainant.

SEC. 14. Defendant admits that said complainant offered to pay for the taxes due December 20th, 1897, on said shares, the sum stated in said bill of complaint, but says; that said complainant refused to pay the balance of the sum so due him and unpaid upon the shares of the stock of complainant. And he denies each and every other allegation in said bill of complaint contained not hereinbefore specifically admitted, and now having fully answered defendant asks to be dismissed with his costs of suit.

P. H. KAISER,
FRANK S. MONNETT,
MINER G. NORTON,
Attorneys for Defendant.

STATE OF OHIO, } ss:
Cuyahoga County, }

R. S. Hubbard, being duly sworn, on his oath says. that he, as treasurer of Cuyahoga county, Ohio, is the defendant in the above action, and that he believes the facts stated in the foregoing answer to be true.

R. S. HUBBARD.

Subscribed in my presence, and sworn to before me this 11th day of April, A. D. 1898.

OLIVER S. CLEWELL,
Notary Public.

[SEAL.]

Tax fee $ .40.

26 Endorsements on answer.

No. 5714. In the circuit court of the United States, northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland, plaintiff, against R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, defendant. Answer. Filed Apr. 12, 1898, Irvin Belford, clerk, U. S. circuit court, N. D. O. P. H. Kaiser, Frank S. Monnett and Miner G. Norton, att'ys for defendant.

Replication.

United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} No. 5714. Replication.

The plaintiff saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, for replication thereunto says, that it does and will ever maintain and prove its bill of complaint to be true, certain and sufficient in the law to be answered unto by said defendant, and it says that the answer of the defendant is uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct and as in and by its said bill of complaint it has already prayed.

W. W. BOYNTON,
Solicitor for Plaintiff.

Endorsements on replication.

No. 5714. U. S. circuit court northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland *vs.* R. S. Hubbard as treasurer of Cuyahoga county, Ohio. Replication. Filed Apr. 18, 1898. Irvin Belford, clerk, U. S. circuit court, S. D. O.

27 *Notice as to Appointment of Special Examiner.*

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} Notice. No. 5714.

To the defendant:

You are hereby notified that the plaintiff will apply to Judge Hammond of said court at the court-room in the Federal building, at Toledo, Ohio, on Monday, August 8th, 1898, at 2 o'clock p. m. for the appointment of an examiner and a stenographer for the purpose of taking testimony in this cause. The plaintiff desires the evidence to be adduced in this cause to be taken orally.

W. W. BOYNTON,
Attorney for Plaintiff.

We have notice of the foregoing application this 5th day of August, 1898.

P. H. KAISER,
Attorneys for Defendant.

Endorsements on notice.

5714. Mercantile National Bank of Cleveland, *vs.* R. S. Hubbard, Co. treas'r. Notice as to appointment of special examiner. Filed Aug. 13, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Endorsed on the back of said notice was the following:

Appoint Irvin Belford, the clerk of the court as special examiner to take this proof Aug. 11, 1898.

E. S. HAMMOND, *Judge.*

28 *Order Appointing Irvin Belford Special Examiner.*

Chancery Order Book 3–51.

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} 5714. Chancery.

Upon reading and filing notice of motion for the appointment of a special examiner herein with admission of service, it is ordered by the court that Irvin Belford, on account of his experience in such matters, be and he is hereby appointed special examiner herein under the 67th rule as amended. The said special examiner shall take the testimony in behalf of both complainant and respondent and is authorized to take the same in the northern district of Ohio, or elsewhere according to the convenience and requirements of parties. Said testimony shall be given orally by witnesses and be taken down stenographically by a skilled stenographer approved by the parties or appointed by the court, and thereafter reduced to typewriting and when subscribed by the witnesses and duly certified the same shall be admitted in evidence.

Done at chambers in the city of Toledo, Ohio, this 11th day of August, 1898.

E. S. HAMMOND, *Judge.*

Entered August 13, 1898.

Notice of Motion for Appointment of Master.

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.

29 Motion for appointment of a master.

Now comes the plaintiff and moves the court to appoint a master in said cause to examine the testimony taken and to be taken therein, and to make therefrom a special finding of facts upon the issues joined between the parties, and to report the same and his conclusions of law thereon to the court, the ground of said motion

being that said testimony is very voluminous requiring much time for its consideration.

W. W. BOYNTON,
Its Attorney.

Cleveland, Ohio, Aug. 26, 1898.

The defendant has notice of the plaintiff's intention to present the above motion and identical motions in causes Nos. 5715-5716-5717-5718-5719-5721-5722-5723-5726-5732 to Judge Hammond at the Federal court-room in Toledo, Ohio, on Tuesday, Sept. 6th, 1898, at 10 o'clock a. m.

P. H. KAISER,
Attorney for Defendant.

Endorsements on notice.

5714. U. S. circuit court. Mercantile National Bank *vs.* R. S. Hubbard, as treasurer, etc. Notice of motion for master's appointment. Filed Aug. 30, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Order Appointing Irvin Belford Master.

Chancery Order Book 3–70.

United States Circuit Court.

MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio. } Order.

On motion of the plaintiff for the appointment of a master in said cause it is ordered that Irvin Belford, because of his experience in matters of accounting, be and he is hereby appointed special master in said cause to examine the record and the evidence now on file or hereafter taken therein and to make a special finding of fact on the issues joined between the parties and to report the same to the court and his conclusions of law thereon.

Done at chambers at the city of Toledo, O., Tuesday, Sept. 6th, 1898.

(Signed) E. S. HAMMOND, *Judge.*

Entered September 6th, '98.

Order of Continuance.

April term, A. D. 1898, to wit, September 29th, A. D. 1898.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting by designation, and Honorable Augustus J. Ricks, U. S. district judge.

MERCANTILE NAT'L BANK
vs.
R. S. HUBBARD, Treasurer. } Chancery. 5714.

This cause is continued to the next term of this court.

Order Setting Time for Taking Testimony.

October term, A. D. 1898, to wit, November 2nd, A. D. 1898.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting by designation, and Honorable Augustus J. Ricks, U. S. district judge.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, *vs.* R. S. HUBBARD, as Treasurer. } 5714. Equity.

On motion of plaintiff it is ordered that the defendant take the testimony of his witnesses and file the same in this court by January 1st, 1899, and that the plaintiff have until the 15th of January to reply thereto by any additional testimony.

31 *Motion for Leave to Withdraw Depositions.*

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County. } Motion.

Now comes the plaintiff and moves the court for leave to withdraw the deposition of L. B. Boynton and George H. Lewis, auditor of Lorain county, and for ground of said motion says that the matter contained in said depositions is wholly irrelevant to the issue. The plaintiff desires to withdraw the same in order to save the defendant any trouble or expense in taking testimony in answer to the matter contained in said depositions.

W. W. BOYNTON,
Solicitor for Pl'ff.

Endorsements on motion.

The Mercantile Nat'l Bank *v.* R. S. Hubbard, as treas. 5714. Motion for leave to withdraw depositions. Filed Nov. 9, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O. W. W. Boynton.

Application for Leave to Amend Answer.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} No. 5714.

Application for leave to amend answer.

Now comes the defendant, by his counsel, M. G. Norton and
32 P. H. Kaiser, and moves the court for an order permitting him, the said defendant, to amend his answer herein and proffers to the court with this motion the affidavit of said M. G. Norton in support thereof, and also the amendment to said answer showing the new matter introduced by such amendment.

P. H. KAISER,
F. S. MONNETT, AND
M. G. NORTON,
Of Counsel for the Defendant.

CLEVELAND, O., 11, 29, '98.

The plaintiff acknowledges notice of the above motion on the day above written.

W. W. BOYNTON,
Counsel for Plaintiff.

Endorsements on application.

5714. In the United States circuit court for the northern district of Ohio, eastern division. The Mercantile National Bank, plaintiff, *v.* R. S. Hubbard, treasurer, defendant. Application for leave to amend answer. Filed Nov. 29, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Affidavit of M. G. Norton on Application.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} Affidavit.

THE STATE OF OHIO, *Cuyahoga County,* } *ss:*

M. G. Norton, being by me, the undersigned authority, first duly sworn, deposes and says that he is one of the attorneys for the de-

fendant herein, prepared the original answer herein which is on file in this case; that in the preparation of the answer as filed, that he was not acquainted with the matters as set forth in the
33 amendment to the answer, and which has been tendered to the court for the purpose of having the same filed herein; that the facts contained in said answers were not known to him at the time of the preparation of said original answer and have been disclosed to him only since the taking of the testimony on the part of the complainant herein, at which time the facts as recited in said answer *was* for the first time disclosed and the same made known to him. That said defenses as set forth in said amendment to said answer are material to the merits of the case in controversy, and that if the same had been known to him at the time of the preparation of the answer herein that he would have inserted the same as additional defenses in the answer as prepared by him; that the same will not require or occasion new or additional testimony to be taken on the part of the said complainant herein for the reason that said statement of facts as set forth in said answer has been fully disclosed in the testimony adduced by the complainant herein; that not only did he, the said affiant, not know of the existence of the facts set forth in said amendment to said answer, but he could not have, by the exercise of reasonable diligence, obtained such information; that at the time of the preparation of said answer the attorney general representing the State of Ohio in said cause was not present and had nothing whatever to do with the drawing of said answer, as the State of Ohio was not a party and said attorney general was only taken into said cause after said cases had been at issue, and the facts as known to said attorney general as set forth in said amendment to said answer, were not disclosed, or any part of the same made known by him to said affiant at the time of the preparation of the original answer herein. Said affiant tenders with his affidavit herein said amendment to said answer making evident to the court the contents thereof and the necessity and merits of the plea as therein contained.

M. G. NORTON.

Sworn to before me and signed in my presence by the said M. G. Norton, this 29th day of November, A. D. 1898.

IRVIN BELFORD,
Clerk U. S. C. Court, N. D. Ohio.

Endorsements on affidavit.

5714. In the United States circuit court for the northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland, O., plaintiff, *vs.* R. S. Hubbard, treasurer, etc., defendant. Affidavit. Filed Nov. 29, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O.

34 *Leave to Amend Answer.*

October Term, A. D. 1898, to wit, December 23rd, 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
R. S. HUBBARD, as Treasurer. } 5714. Chancery.

Leave is hereby granted the defendant to file instanter an amendment to his answer and all questions as to costs on his application are continued until the further order of this court.

Amendment to Answer.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio,
Defendant. } No. 5714.

Amendment to answer.

The defendant, as an amendment to his answer filed herein, says:

That under section 2765 of the Revised Statutes of Ohio, it became and was the duty of the cashier of said plaintiff bank to make out and return to the auditor of said county of Cuyahoga (being the county in which said plaintiff bank is located), between the first and the second Monday of May, A. D. 1897, a report in duplicate, under oath, exhibiting in detail and under appropriate heads, the resources and liabilities of such bank, at the close of business on the Wednesday next preceding said second Monday of May, 1897.

That by section 2766 of the Revised Statutes of Ohio, upon receipt of such report, it became and was the duty of the county auditor to fix the value of the shares of said plaintiff bank, according to their true value in money, and deduct from the aggregate
35 sum so found the value of the real estate included in the statement of resources as the same stands on the duplicate; and thereupon said county auditor shall make out and transmit to the annual State board of equalization for incorporated banks a copy of the report so made by the cashier of said plaintiff bank, together with the valuation of such shares as so fixed by said county auditor.

Defendant further says that the valuation as so fixed by the said county auditor upon said shares of bank stock of plaintiff bank, was based upon the resources and liabilities so returned by the cashier of said bank. That said resources and liabilities of said plaintiff bank were not truly returned by the cashier thereof, but that the resources

thereof *was* returned by said cashier at a much less amount than they actually were at said time, to wit, at least $114,872 less than the same should have been returned.

That the total value of the shares of said bank as fixed by the said county auditor of Cuyahoga county, was estimated upon said untrue return of said cashier; and said auditor having based his calculations as to the value of said shares upon said untrue return of said cashier, and without knowing that said return was untrue, thereupon wrongfully fixed the value of said shares at $636,690, and deducted from the aggregate sum so found the value of the real estate of said bank, amounting to $117,370, leaving the value of said shares, less said real estate as so wrongfully fixed by said auditor, at $519,320.

That thereupon the county auditor made out and transmitted to the annual State board of equalization for incorporated banks a copy of the report so made by the cashier of plaintiff bank, together with the valuation of such shares so fixed by said auditor.

That acting under and pursuant to the powers vested in it by section 2809 of the Revised Statutes of the State of Ohio, and pursuant to the rules and practice adopted by said board, it, the said board for the equalization of the shares of incorporated banks, after due notice of the time and place thereof given to the said plaintiff bank, did meet and examine the return of the said plaintiff bank as so wrongfully made by the cashier thereof, and also examined the value of the shares of said bank as fixed by said county auditor, and transmitted to said board.

This defendant says that upon the examination of said return of said plaintiff bank made to the county auditor of Cuyahoga county and the value of the shares of said plaintiff bank as fixed by said county auditor, said board for the equalization of the shares
36 of incorporated banks, from the evidence before them, found and adjudged that the value of the shares of said plaintiff bank, as compared with the value of the shares of all other incorporated banks in said State of Ohio, was grossly inadequate, and was far below the value as fixed upon such other shares.

That in order to equalize the value of the shares of said plaintiff bank with the values of all other incorporated bank shares in said State; and in order to make the capital stock of all incorporated banks in said State equal in valuation for the purpose of taxation, having in view their actual cash value, said board took the valuation of bank shares as reported to it by the auditor of Cuyahoga county, Ohio, including the report of the plaintiff bank therein, and compared the same with the reports of the same character made to said board by the auditor of all other counties of said State.

That upon such comparison being made, as aforesaid, the said board found and adjudged that in order to equalize the assessed value of the shares of said plaintiff bank, with the assessed valuation of other incorporated banks of said State, it was necessary to increase the assessed value of the shares of plaintiff bank in the sum of — per cent., which said board accordingly did, thereby fixing the total assessed value of said plaintiff bank shares at $642,320, being $123,000 more than the value fixed by the county auditor aforesaid; and said

action of said board of equalization of the shares of incorporated banks, is the same action as is complained of by the said plaintiff bank herein.

Second. Said defendant, for a second and further defense herein, says that by section 167 of the Revised Statutes of Ohio, it is provided that the auditor of State may remit such taxes and penalties thereon as he ascertains to have been illegally assessed, and such penalties as have accrued, or may accrue, in consequence of the negligence or error of any officer required to do any duty relating to the assessment of property for taxation, or the levy or collection of taxes, and he may, from time to time, correct any error in any assessment of property for taxation or in the duplicate of taxes in any county; provided, that when the amount to be remitted in any one case shall exceed one hundred dollars, he shall proceed to the office of the governor and take to his assistance the governor, attorney general, and in all such cases may remit no more than shall be agreed upon by a majority of the officers named.

37 This defendant says that at the time of the action of said board for the equalization of shares of incorporated banks as set forth in said first defense herein, being at the time of the appearance of the said plaintiff bank before it, the said board, that it was informed by the governor, auditor of State and attorney general that if any injustice had been done it, the said plaintiff bank, by the action of said board for the equalization of shares of incorporated banks, or if the finding and judgment of said board was excessive, illegal or erroneous, that said officials composed of the governor, the attorney general and auditor of State would convene under section 167 of the Revised Statutes of Ohio, and would give to said plaintiff bank an opportunity to be heard before them sitting as a board of revision created by section 167, and if said plaintiff bank should make it *to* appear that said finding and judgment of said board for the equalization of shares of incorporated banks were excessive, illegal or erroneous, that said board of revision would correct the same; and said officials aforesaid offered then and there to convene as such board to consider the matters and evidence brought before them as such board by said plaintiff bank, and offered to convene at such time as would be satisfactory to said plaintiff bank, so as to enable the said plaintiff bank to produce its evidence, and to be heard in person and by counsel, and have such matters heard before it, and the inequalities and injustice, if any had been done it, corrected.

Defendant says that upon such offer being so made to said plaintiff bank, by said officials, that said bank, by its officers and agents, then refused to submit themselves, or the subject-matter that had been heard and passed upon by said board for the equalization of bank shares, to the jurisdiction of said board of revision; and then and there informed said officials that they had been advised by their counsel that said board of revision created under section 167 of the Revised Statutes of Ohio had no power or authority to hear said matters so offered to be heard, and had no jurisdiction in the premises, and for that reason, and for no other reason, refused to submit

themselves or said matters in dispute to the jurisdiction of said board of revision.

Said defendant says that said section 167 of the Revised Statutes of Ohio is *in parti materia*, and is a part of the taxing system of said State of Ohio, and of the machinery for the collection of the public revenue of said State; and thereby provides that when the amount of taxes to be remitted, as in the case at bar, exceeds one hun-
38 dred dollars, that said board of revision, consisting of the governor, auditor of State and attorney general, thereby constitutes and is an appellate board to the action of the board for the equalization of shares of incorporated banks, and has the power, authority and jurisdiction conferred upon it by said section of the Revised Statutes of Ohio, to review, revise and correct all excessive, illegal or erroneous assessments, findings or judgments that might have been made by said State board for the equalization of shares of incorporated banks in connection with, or in regard to the assessment, levy and collection of taxes in said State, and that said plaintiff bank not having appealed to said board of revision, consisting of the governor, auditor of State and attorney general, as provided by said section 167 of the Revised Statutes of Ohio, and not having given said board an opportunity to review, revise and correct the judgment and finding of said board, if said judgment and finding were excessive, illegal or erroneous, and by the refusal of said plaintiff bank to submit said cause and matters in dispute to said board of revision, it, the said plaintiff bank, has not exhausted its usual and ordinary remedy at law, and has not exhausted the remedies provided in such cases by the statutes of Ohio, that thereby this court has no jurisdiction in equity to hear and to determine said cause, and said plaintiff bank should not be permitted to further prosecute its action herein.

P. H. KAISER,
M. G. NORTON,
F. S. MCKNETT,
Counsel for Defendant.

THE STATE OF OHIO, }
Cuyahoga County, } ss:

Miner G. Norton, being first duly sworn, deposes and says that he is an attorney for defendant in foregoing action, and the statements made and allegations contained in the foregoing amendment to the answer of the defendant filed herein are true in substance and in fact.

MINOR G. NORTON.

Sworn to before me and signed in my presence by the said Miner G. Norton, this 23rd day of December, A. D. 1898.

JNO. VAN NOSTRAN,
Deputy Clerk, U. S. Circuit Court, N. D. O.

Endorsements on amendment to answer.

No. 5714. In the United States circuit court for the northern district of Ohio, eastern division. The Mercantile National
39 Bank of Cleveland, Ohio, plaintiff, *vs.* R. S. Hubbard, treas., defendant. Amendment to answer. Filed Dec. 23, 1898. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Order Fixing Time for Taking Testimony.

October Term, A. D. 1898, to wit, December 23rd, A. D. 1898.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, *vs.* R. S. HUBBARD, as Treasurer. } 5714. Chancery.

On application of the defendant the order heretofore made limiting the time of the defendant to take testimony and to file the same in this court, is hereby modified so that the defendant is ordered to take the testimony of his witnesses and file the same in this court by Jan. 15th, 1899, and that the plaintiff is allowed until the 1st of February, 1899, to reply thereto by any additional testimony.

Replication to Amendment to Answer.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Plaintiff, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant. } No. 5714.

Replication to amendment to answer.

This replicant, saving and reserving to itself all and all
40 manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the amendment to the answer of said defendant, for replication thereunto, says that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the amendment to the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said amendment to the answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honor-

able court shall direct, and humbly — as in and by its said bill it has already prayed.

W. W. BOYNTON,
Solicitor for Pl'ff.

Endorsements on replication to amendment to answer.

No. 5714. The U. S. circuit court. The Mercantile Nat'l Bank of Cleveland, O., *vs.* R. S. Hubbard, treas. Replication to amendment to answer. Filed Jan. 5, 1899. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Order to Withdraw Depositions.

October Term, A. D. 1898, to wit, January 17th, A. D. 1899.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting by designation, and Augustus J. Ricks, U. S. district judge.

THE MERCANTILE NATIONAL BANK
vs.
R. S. HUBBARD, Treas'r, etc. } 5714. Chancery.

On hearing in open court and good cause having been shown after notice to the defendant, leave is granted to the plaintiff on its motion to withdraw the depositions taken on its behalf at Elyria, Lorain county, Ohio.

41

Order of Continuance.

October Term, A. D. 1898, to wit, February 6th, A. D. 1899.

Present: The Honorable E. S. Hammond, U. S. district judge, sitting by designation, and Augustus J. Ricks, U. S. district judge.

MERCANTILE NATIONAL BANK
vs.
R. S. HUBBARD, Tr. } 5714. Chancery.

This cause is continued to the next term of this court.

Order of Continuance.

February Term, A. D. 1899, to wit, April 3rd, A. D. 1899.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

MERCANTILE NATIONAL BANK
vs.
R. S. HUBBARD, Tr. } 5714. Chancery.

This cause is continued to the next term of this court.

Order of Continuance.

April Term, A. D. 1899, to wit, August 14th, A. D. 1899.

Present: The Honorable Horace H. Lurton, U. S. circuit judge.

MERCANTILE NATIONAL BANK *vs.* R. S. HUBBARD, Treas'r. } 5714. Chancery.

This cause is continued to the next term of this court.

42 *Report of Special Master.*

In the Circuit Court of the United States, Northern District of Ohio. Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Complainant, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Respondent. } No. 5714. Report of Special Master.

The undersigned, heretofore appointed by this court as special master in this cause, begs to report to this honorable court that he has examined the pleadings filed in this cause and the testimony heretofore taken herein, and has heard the arguments of counsel for the complainant and respondent and now comes and makes the following report, to wit:

Findings of Facts.

First. That the complainant, The Mercantile National Bank of Cleveland, Ohio, is a national banking association, organized under the laws of the United States, and engaged in such banking business in the city of Cleveland, Ohio.

Second. That the auditor of State, prior to the year 1897, had prepared and transmitted to the auditors of the several counties in the State a form of return to be used by banks or banking associations organized under the laws of the State of Ohio, or of the United States, upon which said banks were required to make their return or report under oath required by section 2765 of the Revised Statutes of Ohio. That in said form so prepared the following instructions were incorporated: "You are also required to accompany this return with a copy of the report to the Comptroller of the Currency made next prior to the second Monday of May, 1897."

That said blank form of report was by the auditor of Cuyahoga county sent to each national bank in said county, including complainant bank.

Third. That on the 15th day of June 1897, the cashier of the complainant made a report in duplicate to the auditor of the county of Cuyahoga on said blanks, purporting to show the resources and lia-

bilities of said banking association, at the close of business on
43 the Wednesday next preceding the second Monday of May, 1897, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and that said report was sworn to by the cashier of said complainant on the 8th day of June, 1897; said report contained a statement that the said complainant had at that time a capital stock of one million dollars, fully subscribed and paid up, and that it had a surplus and undivided profit amounting to $174,541.49; and that said capital stock was divided into ten thousand shares of $100.00 each; that the value of the complainant's real estate, furniture and fixtures was $300,000, and that its current expenses and taxes paid were $9,328.52.

Fourth. That said report was accompanied by a copy of the report to the Comptroller of the Currency made next prior to the making of said report and the same was filed with the auditor of said county.

Said report so made to the Comptroller of the Currency was made by the cashier of said complainant bank, on the 14th day of May, 1897, and was sworn to by the cashier of said bank, and verified by three of the directors thereof, as required by law. Said report contained the statement that the capital stock of said complainant's bank, paid in, amounted to $1,000,000, its surplus fund $200,000, and that its undivided profits amounted to $89,413.87, and that its banking-house, furniture and fixtures were of the amount and value of $255,000. Said report was a statement of the condition of the bank as shown by its books on that day, and made no allowances or deductions on account of doubtful assets.

Fifth. The county auditor when he noticed a discrepancy between the report made to the Comptroller of the Currency and the report made to the auditor for taxation, called the attention of the cashier of said bank to the discrepancy and the cashier appeared before him in person and thereafter the auditor fixed the total value of the shares of complainant's bank at $636,690, and deducted from that aggregate sum the value of the real estate as the same then stood on the tax duplicate, amounting to $117,370.00, leaving the total value of shares of complainant's bank exclusive of real estate as fixed by the auditor at $519,320.

The master finds that the actual method of determining said value by the auditor aforesaid was that of taking the sum of the par value of the capital stock, and the surplus and undivided profits as reported, less a certain sum for bad paper, and deducting there-
44 from the reported value of real estate and taking 60 per cent. of the remainder thereof as the taxable value, as shown below:

Value of capital stock.....	1,000,000.00
Surplus and undivided profits.....	174,540.00
	1,174,540.00
Real estate, etc., deducted.....	309,000.00
	865,540.00
	60 per cent.
	$519,324.00
The value fixed by the auditor.....	$636,690.00
Being fixed so that a deduction of the real estate as it stands on the duplicate, viz.....	117,370.00
Would leave about the same balance, viz.....	$519,320.00

Sixth. Said county auditor made out and transmitted to the annual State board of equalization for incorporated banks, a copy of the report so made by the cashier of complainant bank, together with the valuation of such shares as so fixed by him, on the 19th day of July, 1897. There was attached to said report a copy of the report of the Mercantile National Bank of Cleveland, Ohio, to the Comptroller of the Currency made next prior to the second Monday of May, 1897, to wit, May 14, 1897.

Seventh. That the said board of equalization for incorporated banks composed of the governor, auditor of State and attorney general, convened on the third Tuesday, being the 15th day of June, 1897, at the office of the State auditor, as required by section 2808, Revised Statutes of Ohio, and organized by the election of the governor as president of the board and G. W. Taylor, chief clerk in the office of the auditor of State, as secretary, and adjourned at the call of the secretary, transacting no other business at that meeting; that the members composing said board next met on the 7th of September, 1897, but took no action relating to the valuation of the shares of the plaintiff, and adjourned; that two members of said board with said secretary met on the 10th day of September, 1897, but took no action relating to the shares of the plaintiff bank, and adjourned; that on the 20th day of September, 1897, the members of said
45 board met but took no action relating to the valuation of the shares of plaintiff and adjourned; that on the 4th day of December, 1897, the members of said board next met at the call of the State auditor to consider unfinished business. The record of the meetings of said board as originally made by the secretary shows that at the meeting held June 15, 1897, the board "adjourned to meet at the call of the secretary." That at the meetings of September 7, 1897, September 10, 1897, September 20, 1897, the "board adjourned." At the meeting held December 4, 1897, the secretary was directed to amend the record as to each of said above-named adjournments by adding these words: "Amended to read, 'adjourned to meet at the call of the president of the board, Asa S. Bushnell, governor of the State,'" and thereupon said board adjourned *sine die*.

Some time after December 4, 1897, the record was amended by the secretary as directed by said board. At none of said adjournments was a day named for the next meeting.

Eighth. At said meeting on December 4, 1897, without complaint from any one, the members of said board assuming to act as a board, increased the valuation of the shares of the plaintiff from $519,320.00, so fixed by the county auditor, to $642,320.00, and on the 6th day of December certified said valuation to the auditor of Cuyahoga county to be by him placed on the treasurer's duplicate, which was accordingly done; that neither of said meetings of the members of said board following the third Tuesday of June, 1897, was called by said secretary and no notice or information of any kind or opportunity to be heard was given by said board, its secretary or any other person to said bank or any of its officers, directors or shareholders of any or either of said meetings, except such as the statute gave them, to wit: section 2808 Revised Statutes and succeeding sections; nor did they or either of them have any notice of any of said meetings or appear thereat, and the first information that said bank or any of its shareholders had or received of any action of the board or of the purpose to increase the value of the shares so fixed by the auditor was on the 7th day of December, 1897, after the action of the board was had and such information was conveyed by letter from the auditor of the county to the cashier of the plaintiff, notifying him of the completed action of the board; that thereupon said bank and its shareholders through the officers and agents of the bank duly authorized, applied to the members of said board for a hearing, and *was* notified that two of the members of said
46 board were out of the State and that December 28th was as early as the bank officers could be received; that on said day the officers of said bank on behalf of said shareholders duly authorized, met the members of said board at Columbus, and made application for a hearing respecting the valuation of said shares and the action of said board, and notified said members of said board that such increase made on the shares of said bank was excessive and unwarranted and protested against the same, but said hearing was denied, the members of said board declaring that the board had adjourned *sine die* and could not reconvene as a State board of equalization for banks to consider any claim or application respecting the value of said shares.

At the time the persons who had composed the State board of equalization for banks and who are the same persons required to act under section 167 of the Revised Statutes of Ohio offered to convene and organize under said section 167 to consider the case of the various plaintiff banks at such time as might be convenient for the representatives of the Cleveland banks to appear. Some doubt was expressed by some of the members of the committee that the board would not have the power under section 167 to afford as full relief as the board of equalization and only one of the Cleveland banks appeared before the board when organized under section 167, viz., the First national bank, the others declined to appear.

Ninth. That the said auditor of said county of Cuyahoga upon

the receipt of the certificate from said State board of equalization entered said valuation of $642,820.00 upon the tax duplicate of said county for the year 1897, and assessed against the same taxes at the rate of 3.03 cents on each dollar, and which amounted on said valuation to $19,462.30. The taxes on said bank shares at the said rate of 3.03 — on each dollars, if assessed on the valuation of $519,320, as fixed by the auditor of Cuyahoga county would have amounted to the sum of $15,735.39.

Tenth. That at the time the cashier of the complainant bank made its report to the auditor of Cuyahoga county, Ohio, for the year 1897, the following-named persons were stockholders of the complainant, owning and holding the number of shares set opposite their respective names, to wit:

	Edwin R. Perkins	530 shares
	Edwin R. Perkins, as executor of the last will and testament of T. P. Handy	400 shares
	Samuel E. Williamson	50 shares
47	W. G. Mather	70 shares
	W. S. Tyler	250 shares
	Orville L. Jones	30 shares
	A. L. Withington	30 shares
	William Bingham	150 shares
	James Barnett	400 shares

Eleventh. That each of said stockholders was on said tax day indebted and owing of legal, *bona fide* debts of the kind which the statute of Ohio permits to be deducted from credits a sum in excess of all credits from which, under the laws of the State of Ohio, he was entitled to deduct said debts to an amount equal to the par value of the number of shares specified opposite their respective names in the following list, to wit:

Edwin R. Perkins	254 shares
Edwin R. Perkins, as executor of the last will and testament of T. P. Handy	400 shares
Samuel E. Williamson	50 shares
W. G. Mather	70 shares
W. S. Tyler	250 shares
Orville L. Jones	30 shares
A. L. Withington	30 shares
William Bingham	150 shares
James Barnett	245 shares

Proof of said indebtedness was by them made to the auditor of said county accompanying the return made by the cashier of the plaintiff in 1897, and a deduction thereof from the assessed value of the shares so owned by them was then claimed.

Twelfth. That in the affidavits showing such indebtedness said stockholders respectively set forth the following as the amount of their legal, *bona fide* debts, over and above all their credits, to wit:

Edwin R. Perkins	$32,500.00
Estate of Truman P. Handy	50,000.00
S. E. Williamson	5,000.00
W. G. Mather	7,000.00
James Barnett	31,333.00
W. S. Tyler	25,000.00
Orville L. Jones	6,200.00
A. L. Withington	3,000.00
William Bingham	15,000.00

48 Thirteenth. The master finds that their respective excess of indebtedness at that time was in fact, as follows:

E. R. Perkins	$32,500
E. R. Perkins, as executor	86,000
S. E. Williamson	32,000
W. G. Mather	19,000
James Barnett	31,333
W. S. Tyler	45,000
Orville L. Jones	28,000
A. L. Withington	17,500
William Bingham	116,000

Fourteenth. The master further finds and reports the following facts appearing from the testimony taken herein, to wit:

The cashier of the Mercantile National Bank of Cleveland, on the 23 day of July, 1897, made a report to the Comptroller of the Currency of the condition of said bank which was attested by three directors of said bank, which said report contained the statement to said comptroller that the capital stock of said complainant's bank paid in, amounted to $1,000,000.00, its surplus fund $200,000.00, undivided profits $94,254.77.

That the semi-annual report of earnings and dividends of said bank made to the Comptroller of the Currency, and verified by the cashier thereof for the six months ending October 31st, 1896, was as follows:

Losses sustained		Gross earnings	$74,543 72
Expenses and taxes paid	$40,906 67	Other profits	554 66
Net earnings	34,191 71		
	$75,098 38		$75,098 38
Dividend of 3 per cent. on $1,000,000	$30,000 00	Net earnings for six months	$34,191 71
Amount net profits carried forward	99,616 55	Undivided profits from last report	95,424 84
	$129,616 55		$129,616 55
Total surplus	$200,000 00	Total profits since organization	$989,616 55
Total dividends	$690,000 00		
Total other profits on hand			$989,616 55

Fifteenth. That the semi-annual report of earnings and dividends of said bank made to the Comptroller of the Currency, and verified

by the cashier thereof for the six months ending May 1st, 1897, was as follows:

Losses sustained		Gross earnings	$68,558 44
Expenses and taxes paid	$43,524 93	Other profits	
Net earnings	25,033 51		
	$68,558 44		$68,558 44
49 Dividend of 3 per cent. on $1,000,000	$30,000 00	Net earnings for six months.	$25,033 51
Amount net profits carried forward	94,650 06	Undivided profits from last report	99,616 55
	$124,650 06		$124,650 06
Total surplus	$200,000 00	Total profits since organization	$1,014,650 06
Total dividends	720,000 00		
Total other profits on hand.	94,650 06		
	$1,014,650 06		$1,014,650 06

Sixteenth. That the semi-annual report of earnings and dividends of said bank made to the Comptroller of the Currency, and verified by the cashier thereof, for the six months ending October 31st, 1897, was as follows:

Losses sustained		Gross earnings	$61,543 21
Expenses and taxes paid	$47,392 94	Other profits	
Net earnings	20,150 27		
	$61,543 21		$61,543 21
Dividend of 3 per cent. on $1,000,000	30,000 00	Net earnings for six months.	$20,150 27
Amount net profits carried forward	84,800 33	Undivided profits from last report	94,650 06
	$114,800 33		$114,800 33
Total surplus	$200,000 00	Total profits since organization	$1,034,800 33
Total dividends	750,000 00		
Total other profits on hand.	84,800 33		
	$1,034,800 33		$1,034,800 33

And it appears from the census report of 1890, that in Ohio there were real-estate mortgage debts in force amounting to $259,842,188. And in Cuyahoga county, Ohio, alone $21,795,654, apportioned as follows:

On acre property	$2,806,468
On lots	18,989,186

But there is nothing in these reports or in the evidence elsewhere to show what portion of credits consists of moneyed capital in the hands of individuals which in fact enters into competition for business with national banks. Nor is there any evidence as to what the total moneyed capital in the hands of individual citizens and included in the term credits amounts to. The master is therefore unable to ascertain or report what proportion the moneyed capital of

individual citizens included in the term credits, bears to the amount invested in national bank shares, and he is unable to report whether there has or has not been any material discrimination such as the Federal statute was enacted to prevent, against said complainant and in favor of other moneyed capital in the State outside of
50 Cuyahoga county. I find, however, the fact to be, that in said year a large amount of moneyed capital in the hands of individual citizens of the State invested in promissory notes and other obligations and credits, was, by section 2730 of the Revised Statutes of Ohio, authorized to be exempted from taxation through the deduction therefrom of legal *bona fide* debts.

There is nothing in the evidence that will show whether shares of incorporated banks in the counties of the State outside of Cuyahoga county were valued for taxation by the auditors at a higher or lower percentage compared with the true value in money of their stocks than were the banks in Cuyahoga county, and hence the master is unable to report or find whether there was any unjust discrimination as between other incorporated banks and the complainant bank, and against the complainant bank.

An examination of the valuation of shares of banks as returned to and fixed by the State board of equalization of bank shares for 1897, discloses the fact that:

The assessed valuation of shares of all incorporated banks in the State of Ohio, in the year 1897, exclusive of real estate, as fixed by the State board of equalization was 61⅞ per cent. of the aggregate capital stock, surplus and undivided profits of such incorporated banks.

That the assessed valuation of all national bank shares in Ohio, in 1897, exclusive of real estate as fixed by the county auditors of the State was 58.5 per cent. of the aggregate capital stock, surplus and undivided profits as reported to said auditors. Which said valuation was increased by the State board of equalization to about 59.5 per cent. of the said aggregate value of said capital stock, surplus and undivided profits an increase of 1.6 per cent. on the valuation fixed by the auditor.

That the assessed valuation of national bank shares in the State of Ohio for the year 1897, outside of Cuyahoga county, exclusive of real estate as fixed by the county auditors of the State was 58.9 per cent. of the aggregate capital stock, surplus and undivided profits as reported to such county auditors. Which said valuation was decreased by the State board of equalization to 57.7 per cent. of said aggregate value of said capital stock, surplus and undivided profits, being a decrease of a little more than two per cent.

That the assessed valuation of the national bank shares in Cuyahoga county, in 1897, exclusive of real estate, as fixed by the county auditor, was 56.4 per cent. of the aggregate of the capital
51 stock, surplus and undivided profits as reported to the auditor which said valuation was increased by the State board of equalization to 67.8 per cent. of the capital stock, surplus and undivided profits of said banks, being an increase of a little more than

20.2 per cent. of valuation. While the increase of shares of stock of the complainant bank was a little more than 23.6 per cent.

I find that moneyed capital in the hands of individual citizens of the city of Cleveland and the county of Cuyahoga was assessed for taxation by the assessing officers of the county in the year 1897, and for a long time theretofore as nearly as practicable at sixty per cent. of its value. And that as compared with other moneyed capital in said county the value fixed by the auditor on the stocks of said bank for the purposes of taxation was fair and equitable. And I also find that the valuation placed upon the shares of complainant bank by the State board of equalization was much higher than that fixed on other moneyed capital in the hands of individual citizens and corporations in the county of Cuyahoga and city of Cleveland, and that such action of the board of equalization was an unjust discrimination against said complainants.

Eighteenth. By stipulation signed by the parties to said cause it was agreed that if the court holds it competent to put in proof of taxation of moneyed capital and bank shares, outside of Cuyahoga county, that there is no discrimination for counties outside of the county of Cuyahoga, in the State of Ohio, by the taxing officers of said counties in fixing the valuations for the purposes of taxation upon moneyed capital as against shares in incorporated banks.

Nineteenth. I find that on the day said statement was filed with the auditor the actual cash value of the shares of stock in complainant's bank was $128.00 per share, and that the value of the real estate of said bank as it then stood upon the tax duplicate was $117,370.

Twentieth. I find that heretofore, to wit, on the 17th day of December, 1885, an action was commenced in this court by the complainant herein, against Horatio N. Whitbeck, the predecessor of the defendant, as treasurer of Cuyahoga county, to enjoin the collection of taxes assessed against the shares of complainant's stock, growing out of the refusal of the taxing officers of said county to allow the deduction of *bona fide* debts of individual stockholders, from the assessed value of their shares. Which said action proceeded to final decree in this court. Said cause was numbered 4411.

52 The following is a true copy of the record of said cause, to and including the decree therein, now in full force, to wit:

October Term, 1886.

No. 4411. At a stated term of the circuit court of the United States for the eastern division of the northern district of Ohio, begun and held in the city of Cleveland in said district on the first Tuesday in October, being the fifth day of said month in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and tenth.

Present: The Honorable Howell E. Jackson, circuit judge, and the Honorable Martin Welker, district judge.

In the record and proceedings of said court then and there held, among other things appeared the following, to wit:

THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio.

Bill.

Be it remembered that heretofore, to wit, on the 17th day of December, A. D. 1885, there was filed in the clerk's office of said court the following bill of complaint in the above-entitled cause, which bill is in the words and figures, to wit:

In the Circuit Court of the United States of America within and for the Northern District of Ohio, Eastern Division, *ss:*

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio, Defendant.
} Bill.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

Your orator, The Mercantile National Bank of Cleveland,
53 Ohio, respectfully represents that it is a national banking association incorporated under and by virtue of the act of Congress entitled "An act to provide for a national currency secured by the pledge of United States bonds, and to provide for the circulation and redemption thereof." Approved June 3rd, 1864, and the amendments thereof, and is established and doing business in the city of Cleveland in said northern district of Ohio, and brings this, its bill of complaint, against Horatio N. Whitbeck, treasurer of Cuyahoga county, Ohio, a resident of said city of Cleveland, Ohio, and a citizen of Ohio and of said northern district, eastern division; and the grievance herein complained of arises and is exclusively founded on a violation by the defendant and others, whose unlawful acts he is carrying into effect, of rights of the shareholders of said national bank accorded them by section 5219 of the Revised Statutes of the United States — secured to said shareholders a restriction upon the taxation of the shares of stock of said bank by State authority, to that rate and limit assessed upon other moneyed capital in the hands of individual citizens of the State, as will herein fully appear.

And, thereupon, your orator complains and says that it has a capital stock of 1,000,000 dollars divided into ten thousand shares of one hundred dollars each, all of which is paid up, and certificates for the shares outstanding and owned by a large number of persons, some of whom are now residents of the said State of Ohio and citizens of other States; that, in accordance with section 2765 of the Revised Statutes of the State of Ohio, then in force, the cashier of your orator duly reported, in duplicate, to the auditor of said county, the resources and liabilities of said banking association at the close

of business on the Wednesday next preceding the second Monday in May, 1885, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share, as required by said section 2765; that, included in said return so made by said cashier, was the real estate owned by your orator at a valuation of $163,060.00, which was already valued and equalized in conjunction with all the other real estate in the city of Cleveland by the proper board of equalization at a taxable value of $163,060.00 which tax on said real estate so valued in said return at the sum of $163,060.00, being the sum paid by said bank therefor—is otherwise and separately assessed and charged on the tax duplicate of said county, and paid by this complainant to the treasurer of said county aside from the taxes set forth in this bill.

54 That thereupon, the said auditor pretended to proceed as required by section 2766 of the Revised Statutes of Ohio, as amended March 9th, 1883, to fix the total value of such shares according to their true value in money and fixed the same at $444,820.00 exclusive of the assessed value of its real estate; and made out and transmitted to the annual State board of equalization for incorporated banks, a copy of the report so made by said cashier, together with the valuation of such shares as so fixed by said auditor; and your orator, from information and belief, alleges that the said county auditor, for the purpose of more accurately determining and fixing the value of said shares, did meet with and consult the board of equalization for the city of Cleveland, and the valuation by him reported to the State board of equalization was fixed and determined upon by said auditor with the assistance and approval of said city board of equalization; that it is by law, the duty of said city board of equalization to value and equalize for taxation all moneyed capital and personal property of every kind in the hands of individual citizens of the State of Ohio, resident in said city, except only the capital, assets and shares of incorporated banks, that being the only property under the statute aforesaid referred to said State board of equalization to be equalized.

That said auditor placed a value upon said shares which was, in fact, and was known by him to be far in excess of the value fixed in said county on other moneyed capital in the hands of individual citizens of the State of Ohio, and of said city and county. That the said State board of equalization assuming and pretending to comply with the requirements of section 2808 and 2809 of the said Revised Statutes as amended March 9, 1883, did examine the return aforesaid made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor; but that said State board of equalization did not examine as required by law, any other returns made by said county auditor to the State auditor, and the said board did then pretend to equalize said shares to their true value in money, and fixed the valuation thereof at $495,774.76 exclusive of the assessed value of its real estate.

That said State board of equalization, so called, knowingly and designedly did fix a much higher per cent. of value and assessment

for taxation upon the capital stock and shares of your orator than upon the capital and shares of other banks organized and existing under the laws of the State of Ohio, and which they pre-
55 tended to equalize, a much higher rate and per cent. than was assessed upon other moneyed capital in the hands of citizens of the State of Ohio and much higher than that fixed upon other moneyed capital in the hands of such citizens in the said county of Cuyahoga and city of Cleveland. That about four-fifths of the taxes assessed in said city of Cleveland and upon the stockholders of your orators upon their shares, in said bank, are assessed and paid for the purposes and are of the said city of Cleveland, and about one-tenth for the purposes and are of the said county of Cuyahoga, and only about one-tenth for the purposes and are of the State of Ohio. That said State board of equalization did not equalize the value of said shares with the value of shares in other banks or with the values of other moneyed capital in the hands of citizens of the State of Ohio, county and city, but designedly and intentionally placed a much higher value thereon, which valuation so purposely equalized and determined by said State board of equalization, the auditor of said State did certify to the said auditor of Cuyahoga county, which valuation so certified the said county auditor did enter upon the tax duplicate of said county for the year 1885.

That, afterward, said county auditor did enter upon the tax duplicate of said county for the year 1885 against your orator, a tax on such valuation of such shares for the year 1885 amounting in the aggregate to $12,890.15 and upon a valuation as aforesaid of such shares of $495,774.76 exclusive of the assessed value of its real estate.

That a large part of the capital stock of your orator is invested in the obligations and securities of the United States, and in the lawful money thereof, and that said tax so levied and assessed, was and is, in violation of law unauthorized and void. That the said tax was levied on a valuation 11.455 per cent. higher than that fixed by the county auditor aforesaid and about four-fifths thereof for the city of Cleveland, to answer the various purposes of that municipal body. That said duplicate as required by law, with the said taxes charged thereon, has been by said county auditor delivered to said Horatio N. Whitbeck, treasurer of said county of Cuyahoga, to be by him collected from your orator by distraint, attachment or other legal proceedings as provided in said statutes, who will immediately proceed to enforce the collection thereof, either by sacrifice of such shares by enforcing the lien thereon created by said statutes, or otherwise, unless restrained by the injunction of this honorable court. And your orator further
56 represents and shows unto your honors that in and by the second section of the twelfth article of the constitution of said State, it is provided that "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and also all real and personal property according to its true value in money," and in and by the third section of the same article that "all property employed in banking

shall always bear a burden of taxation equal to that imposed on the property of individuals," and by the fourth section of the thirteenth article, it is further provided that "the property of corporations now existing or hereafter created shall forever be subject to taxation the same as the property of individuals." And in and by the act of Congress under which your orator is incorporated the right of the State to tax any owner of its shares is made subject to this condition, "that the taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such State."

Your orator further avers that by section 2730 of the Revised Statutes of Ohio, it is enacted that the term "credits" shall be held to mean the "excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due to, or to become due to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this State, other than such as are held to be money as hereinbefore defined, when added together (estimating every such claim or demand at its true value in money) over and above the sum of legal *bona fide* debts owing by such person;" and by section 2736 of the Revised Statutes of Ohio, it is provided that every person required to list property for taxation shall deliver to the assessor annually a statement of all personal property, money and "credits" and other property in his possession or under his control on the day preceding the second Monday of April of that year, which he is required to list for taxation; and by section 2737 it is provided that such statement, among other things, shall truly set forth the amount of "credits" possessed by such person as that term is by the above-recited statute defined. Your orator says that a large amount of moneyed capital in the hands of individuals invested in promissory notes and other obligations and credits is by the aforesaid provision allowing deduction of legal *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares, as to which no
57 exemption or deduction is provided for by the laws of the State, which discrimination is in direct violation of the restrictions of said section 5219 of the Revised Statutes of the United States. Your orator further avers that the following-named stockholders of said bank were, on the said day, next preceding the second Monday of April, A. D. 1885, the owners and thence until now have owned and still continue to own, the numbers of shares of the stock of said bank set opposite their respective names, viz:

T. P. Handy	600
S. Chamberlain	500
R. L. Chamberlain	100
W. Bingham	150
S. L. Mather	400
James Barnett	400
Amos Townsend	240

L. A. Murfry..... 500
C. L. Murfry..... 50
E. R. Perkins..... 530
James Parmolee..... 70

And at the day last named and at the time the cashier of said banking association made return to the auditor of Cuyahoga county, Ohio, of the names and residences of the shareholders of said association with the number and par value of the shares of the capital stock of said banking association for the year 1885, to wit, between the first and second Mondays of May, of said year, each of said above-named stockholders was indebted and owing to others of legal *bona fide* debts a sum in excess of the credits from which under the laws of Ohio he was entitled to deduct said debts, to an amount equal to the value of said shares except said E. R. Perkins and said C. L. Murfry, the excess of whose debts over the credits which by the laws of Ohio they were entitled to deduct from their credits equal- in the case of said Perkins the value of 320 of his said shares and in the case of said Murfry the value of 25 of his said shares, which said excess of said debts over credits as aforesaid, should be deducted from the assessed value of said shares, so owned by him, and by reason of the facts above stated said shares of said stock should not have been placed on the tax duplicate, and no tax should have been assessed thereon. And your orator alleges that neither of the above-named shareholders listed any of said shares for taxation nor did either authorize any one to list them for him.

58 That at the time of the return and statement to the auditor of Cuyahoga county as above stated, neither said bank or said cashier had knowledge of the fact that the shareholders above named were indebted as aforesaid and no opportunity was given them, or either of them, nor was any provision therefor made by law, to deduct from the value of said shares so owned by them the amount of said indebtedness, or to demand the right so to do, or demand that the same should be done, but your orator alleges that on the 17th day of December, A. D. 1885, and before the tax assessed on said shares became due and payable each of said shareholders, and your orator, made due and legal showing and proof to said auditor of Cuyahoga county, when said return was made and to said respondent of the existence of the said indebtedness and demanded that the same should be deducted from the assessed value of the shares owned by him and returned by your orator, but both the respondent and said auditor refused to make said deductions and insisted that the whole of said shares as then assessed should remain upon the tax duplicate and insisted upon the payment of the whole of the tax as assessed thereon. And your orator insists that by reason of the premises above set forth, there should be deducted from the shares of the capital stock owned by said shareholders above named, and now standing on the tax duplicate of said county $285,500 par value of the shares of said stock, in all the sum of $141,543.48 according to the assessed value thereof. And your orator further represents that on the 17th day of December, A. D.

1885, on behalf of the shareholders owning said shares, it duly tendered to said treasurer and offered to pay for the taxes due December 20th, 1885, on said shares the sum of $3,942.59 and is still ready and willing to pay the same, as well as the other half, on the same basis of valuation, in manner and at the times provided by law for the payment of taxes, to wit, on or before the 10th of June, A. D. 1886, if the treasurer will receive it or the court so orders; but said treasurer has so far refused to receive said payment unless your orator would also pay the whole amount of said tax as it stands on the duplicate. Your orator avers and insists that the taxes so levied and assessed against it on account of its said shares of stock are unjust, illegal and void for the following among other reasons:

1st. That said tax is levied and assessed against your orator directly, and is in violation of the act of Congress under which your orator is incorporated.

2nd. That the laws of Ohio authorize and permit the
59 owner of credits to deduct therefrom all debts owing by him and requires him to list for taxation only the excess of credits over his indebtedness, and that such is the uniform practice throughout the State, and that under the laws of the same State the owner of capital stock of your orator is denied the right to deduct therefrom his indebtedness, but is required to list for taxation the whole number of shares owned by him and not simply the excess of the value of said shares over his indebtedness, and your orator insists that such discrimination results in the taxation of your orator's stock at a much greater rate than is assessed upon other moneyed capital in the hands of individual citizens of Ohio.

3rd. Their property in this corporation is not valued and taxed the same as the property of individuals, and the burden of taxation upon it is very much greater, nor has any equality been preserved in the valuation of the shares for taxation as compared with other property in the locality where your orator is established; on the contrary, the valuation in proportion to the value is fully twice as much as that fixed on other property, while the rate of levy is the same.

4th. The proceedings of said State board of equalization were irregular, illegal and of no binding obligation, for, while the said act proposes to give authority to examine and equalize the value of such shares as fixed by the county auditor and as reported by him to the State auditor, yet the said board did in fact examine and equalize as aforesaid, and not otherwise, the values of such shares fixed by the county auditor and determined by him, to the State board of equalization; which value, so fixed and returned, the said State board were not authorized by law to examine, equalize, or in any manner meddle with. While said act proposes to give authority to hear complaints and to equalize the value of said shares as fixed by the county auditor, not increasing the aggregate more than 20 per cent. of such valuation, yet your orator avers that said board has proceeded without any complaint made against the valuation made by said auditor and without any notice to your orator, or the other

national banks located in said city and county, or the shareholders thereof, to increase arbitrarily the valuation for taxation more than five hundred thousand dollars, upon your orator, and upon other national banks of the said city and upon the shareholders thereof without any hearing or any opportunity for hearing, as is fairly required by said act.

5th. That the taxation of the shares of your orator's stock, as aforesaid, is at a greater rate than is assessed upon other
60 moneyed capital in the hands of individual citizens of Ohio.

6th. The necessary effect of the proceedings had in the assessment and levy of the taxes standing against your orator and the share- thereof owned by its said shareholders has been to deprive your orator and such shareholders, both in the manner of valuation and equalization, of all benefit of the constitution and general laws of the State, by which only uniformity in the burdens of taxation upon all description of property could be secured to take from them the security afforded by the limitations of the acts of Congress and to impose upon them such excessive exactions as to make the franchise granted by said act comparatively valueless.

And your orator further represents that if the shares of said stockholders are permitted to be sold under the lien created on them by section 2839 of the said Revised Statutes of Ohio, or otherwise, irreparable injury would not only be done to each of the shareholders, but also to your orator; and it would thereby be subjected to great loss of standing and credit and other injuries, for the redress of which the law affords no remedies, and the franchises with which your orator is invested by the act of Congress aforesaid, would not only be greatly impaired in value, but if such illegal exactions are to continue and be persisted in, would be rendered nearly useless; that the disability imposed upon your orator to make transfers or pay dividends of or upon shares upon which such illegal tax remains unpaid would damage all the ordinary business of your orator and introduce confusion and uncertainty into its transactions, and the consequent loss of public confidence upon which its success depends; or, if your orator should pay such illegal tax and attempt to deduct the amount from dividends or other funds of the shareholders in its hands—which many of its shareholders have already prohibited its doing—it would be subjected to a great multiplicity of suits, brought by its separate shareholders for so doing; and, in any event, a great number of suits would be rendered necessary to adjust the rights of all the parties and your orator would be subjected to great expense and irreparable injury thereby.

Inasmuch, therefore, as your orator is remediless by the strict rules of the common law, and relievable only in equity, it prays that said Horatio N. Whitbeck, treasurer of said Cuyahoga county, may be made party defendant to this bill of complaint; that the writ of subpœna may issue against him, and that he may an-
61 swer the premises; that your honors will grant unto your orator your writ of injunction strictly restraining and enjoining during the pendency of this suit the said Horatio N. Whitbeck treasurer of said Cuyahoga county, as aforesaid, from collecting or

attempting to collect from your orator, or said individual stockholders, by distraint or otherwise, any of the said taxes as the same stand charged on the said duplicate, and that upon the final hearing thereof, the said tax may be declared and decreed wholly illegal and void; or, if your honor should consider your orator not entitled to the relief aforesaid, that the said respondent may be decreed to receive in full of said taxes the sum so tendered by your orator, and *he* perpetually enjoined from collecting or attempting to collect the balance of said taxes so illegally assessed, and for such other and further relief in the premises as equity and good conscience require.

BOYNTON & HALE,
Solicitors for Complainant.

UNITED STATES OF AMERICA, }
Northern District of Ohio. }

Be it remembered, that on this 17th day of December, 1885, personally came before me C. L. Murfry, who, being by me duly sworn, deposes and says that he is the cashier of the complainant in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; that all the allegations and statements therein contained as derived from the information of others, he believes to be true, and all other allegations and statements therein made are true in substance and in fact.

C. L. MURFRY, *C'r.*

Sworn to before me and signed in my presence, the 17th day of December, 1885.

NORTON T. HORR,
Notary Public in and for Cuyahoga County,
State of Ohio. [SEAL.]

Subpœna.

And afterwards, to wit, on the 18th day of December, A. D. 1885, the following subpœna was filed in this cause in said court, viz:

UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon Horatio N. Whit-
62 beck, treasurer of Cuyahoga county, Ohio, if he may be found in your district, to appear in the circuit court of the United States, within and for the district aforesaid at Cleveland, on the first Monday in March next, to answer a certain bill in chancery filed and exhibited in the said court against him by the Mercantile National Bank of Cleveland, Ohio. Whereof he is not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the

United States, this 17th day of December, A. D. 1885, and in the 110th year of the Independence of the United States of America.

A. J. RICKS, *Clerk*,
By O. C. BEATTY, *Deputy Clerk*. [SEAL.]

Memorandum.

The said defendant is required to enter his appearance in the suit in the clerk's office of said court on or before the first Monday of February, 1886, otherwise the said bill may be taken *pro confesso*.

A. J. RICKS, *Clerk*.

NORTHERN DISTRICT OF OHIO, *ss*:

On the 18th day of December, 1885, I made due service of this writ, by delivering a true and duly certified copy thereof to H. N. Whitbeck, treasurer of Cuyahoga county.

W. T. GOODSPEED,
U. S. Marshal.

(Indorsed:) Returnable February 1st, 1886. Rule day for appearance, February 1st, 1886. Rule day for answer, March 1st, 1886. Returned and filed December 18th, 1885. A. J. Ricks, clerk.

And afterwards, to wit, on the 18th day of December, A. D. 1885, being a day of the October term, A. D. 1885, of said court, the following order was filed in this cause in said court, viz:

Restraining Order.

This day came the complainant, and came also the defendant, by counsel, and the motion for an injunction as prayed for came on for hearing, and the court being fully advised in the premises,
63 do order that the defendant be and he is hereby enjoined and restrained prior to the final hearing and further order of this court in the premises from collecting the excessive taxes and assessments complained of in the complainant's bill, by distraint or otherwise, and from serving notice as such treasurer forbidding the officers of said bank from making transfers of the shares or payment of dividends or other funds belonging to said shareholders. It is further ordered that said complainant pay to said defendant as treasurer the amount of taxes admitted by said bill to be due, if said treasurer will receive the same, and in case said treasurer receives the same his receipt therefor shall be without prejudice to his right to test the invalidity of the taxes in dispute in said case. It is further ordered that said complainant file herein its bond in the sum of $2,000, with surety approved by the clerk of said court, conditioned according to law, to indemnify defendant for any damage that may be awarded by the court in the premises against said complainant.

And afterwards, to wit, on Thursday, the 30th day of December, being a day of the October term, A. D. 1885, of said court, the following order was entered in this cause in this court, viz:

Order.

It being shown to the court that the first name of said defendant is Horatio and not Henry, on motion of said plaintiff it is ordered that the name Henry wherever it appears in the pleadings, process or return thereof or orders in said case, be changed to Horatio, and that hereafter said case proceed against said respondent as Horatio N. Whitbeck, instead of Henry N. Whitbeck.

And afterwards, to wit, on the 15th day of March, being a day of the February term, A. D. 1886, of said court, the following order was entered in this cause in said court, viz:

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio.

In this cause leave is given the respondent to file a demurrer to complainant's bill instanter.

64 And afterwards, to wit, on the 15th day of March, A. D. 1886, the following demurrer was filed in this cause in said court, viz:

Demurrer.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Complainant,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio, Defendant.
} Demurrer.

The demurrer of Horatio N. Whitbeck, treasurer of Cuyahoga county, defendant, to the bill of complaint of The Mercantile National Bank of Cleveland, Ohio, complainant.

To the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

This defendant, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true, demurs thereto, and for cause of demurrer says:

1. That this court ought not to take cognizance of or sustain the action aforesaid, because he says that said court has no jurisdiction thereof, as it appears from said bill of complaint that said complainant is established and doing business in the city of Cleveland, in the county of Cuyahoga and State of Ohio.

2. And for further cause of demurrer he says that it appears by the complainant's own showing in its said bill of complaint that the said complainant is not entitled to the relief prayed for in its said

bill against this defendant, and that the facts set forth in the said bill of complaint do not make such a case as entitle said complainant to any relief whatever against the defendant. Wherefore, for divers other causes or demurrer appearing in the said bill of complaint, this defendant demurs to the said bill and to all matters and things therein contained, and prays the judgment of the court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of Horatio N. Whitbeck, treasurer of Cuyahoga county, Ohio, defendant,
65 to the bill of complaint of The Mercantile National Bank of Cleveland, Ohio, complainant, is well founded in law and proper to be filed in the above case.

HADDEN, DISSETTE, COLLISTER,
JAMES LAWRENCE,
CLARENCE BROWN,
Solicitors for Respondent.

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, } ss:

Horation N. Whitbeck, being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

H. N. WHITBECK.

Sworn to before me by said Horatio N. Whitbeck, and by him signed in my presence, this 15th day of March, 1886.

A. E. SHEARER, [SEAL.]
Deputy Clerk, Common Pleas Court,
Cuyahoga County, Ohio.

And afterwards, to wit, on Thursday, the 25th day of March, being a day of the February term, A. D. 1886, of said court, the following proceedings were had in this cause in said court, viz:

Demurrer Overruled.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio.

This cause came on this day to be heard upon the demurrer of Horatio N. Whitbeck, treasurer, to the complainant's bill of complaint herein, and the same was *agreed* by counsel, and thereupon, upon consideration thereof, it is ordered that the same be overruled, and leave is given the respondent to file his answer by April 15th, 1886.

66 And afterwards, to wit, on the 22nd day of April, A. D. 1886, the following answer was filed in this cause in said court, viz:

Answer.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio, Defendant.
} Answer.

The answer of Horatio N. Whitbeck, treasurer of Cuyahoga county, Ohio, defendant, to the bill of complaint of The Mercantile National Bank of Cleveland, Ohio, complainant.

To the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

This defendant reserving to himself all rights of exception to the said bill of complaint, for answer thereunto, admits that he is the treasurer of Cuyahoga county, Ohio, and is a citizen of Ohio, and of said national banking association, incorporated under the act of Congress mentioned in said complaint, with the amendments thereto, and is established and doing business in the city of Cleveland, in said northern district of Ohio; that said complainant has a capital stock of $1,000,000.00, divided into 10,000 shares of one hundred dollars each, all of which is paid up and certificates for the shares are outstanding. That the cashier of said complainant reported in duplicate to the auditor of said county the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday in May, 1885, together with a statement of the names and residences of the stockholders therein, and the number of shares held by each, and the par value of each share, as required by section 2765 of the Revised Statutes of Ohio. That the real estate included in said return is otherwise and separately assessed and charged on the tax duplicate of said county. That the auditor of said county thereupon proceeded to fix the total value of the shares of said bank at $444,820.00, exclusive of the assessed value of its real estate, and made out and transmitted to the annual State board for the equalization of the shares of incorporated banks
67 a copy of the report as made by said cashier, together with the valuation of such shares as so fixed by said county auditor; that the said State board of equalization did examine the return aforesaid made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor and the said board (having proceeded in all respects according to law) fixed the aggregate valuation of the shares of said complainant at $495,774.76, exclusive of the assessed value of its real estate; that the auditor of said State

did thereupon certify to the auditor of said county the valuation of the shares of said complainant as equalized and determined by said State board of equalization, which valuation the said county auditor did enter upon the tax duplicate of said county for the year 1885, and did also enter upon the tax duplicate for the year 1885 a tax on such valuation of such shares for said year amounting in the aggregate to $12,890.15, and upon a valuation as aforesaid of such shares of $495,774.76, exclusive of the assessed value of its real estate. And that afterwards the said duplicate, as required by law, with the said taxes charged thereon, was, by said county auditor, delivered to the said Horatio N. Whitbeck, treasurer of said county, to be by him collected. This defendant also admits that as said tax duplicate for the year 1885 was originally made up by said county auditor and delivered to the said county treasurer, the said tax levied on the total valuation of the shares of said bank, exclusive of the valuation of said real estate, was entered against the name of said complainant, without specifying therein the names of the several shareholders or the tax assessed on the shares held by each, but giving the separate valuation of each of said shares, exclusive of real estate, as fixed by said State board of equalization. He says that said tax was so entered against the name of said complainant because for many years the said complainant, in common with the other banks located in said county, had uniformly paid the taxes chargeable against the shares of its stockholders, and it was agreed and understood between said bank and said county auditor that it would continue to pay the same. This defendant does not admit that said duplicate, as so made up and delivered, was in any respect insufficient or illegal, but, in order to avoid all possible ground for complaint, the said county auditor, since the commencement of this bank action, has corrected the said duplicate, as he is authorized to do by the laws of Ohio, by duly entering thereon the names of the several shareholders
68 of said complainant, the number and valuation of the shares held by each, and the amount of tax chargeable thereon; and this defendant disclaims any purpose of enforcing the collection of said taxes in any other manner than as authorized by law. And further answering the said bill of complaint, this defendant denies that he or any others whose acts he is carrying into effect, is violating or has violated any rights of the shareholders of said complainant, either in respect to the taxation of their shares of stock in said bank, or otherwise; he denies that the said auditor of Cuyahoga county did meet with or consult with the board of equalization for the city of Cleveland, for the purpose of more accurately determining and fixing the value of said shares, or that the valuation by said county auditor reported to the State board of equalization, was fixed and determined upon by said county auditor with the assistance and approval of said city board of equalization, or that it is by law the duty of said city board of equalization to value and equalize for taxation all moneyed capital and personal property of every kind in the hands of individual citizens of the State of Ohio, resident in said city, except only the capital, assets and shares of incorporated banks. He denies that said county auditor placed the value upon said shares

which was in fact, or was known by him to be in excess of the value fixed in said county on other moneyed capital in the hands of individual citizens of the State of Ohio, and of said city and county. He denies that said State board of equalization did not examine any other returns made by said county auditor to said State auditor, except the return made by the cashier of said complainant to said county auditor, and the value of such shares as fixed by said county auditor, or that said State board of equalization knowingly or designedly did fix a higher per cent. of value and assessment for taxation upon the capital stock and shares of said complainant than upon the capital and shares of other banks organized and existing under the laws of the State of Ohio, or a higher rate per cent. than was assessed upon other moneyed capital in the hands of citizens of the State of Ohio, or higher than that fixed upon other moneyed capital in the hands of such citizens in the said county of Cuyahoga, city of Cleveland. He denies that said State board of equalization did not equalize the value of said shares with the value of other moneyed capital in the hands of citizens of the State of Ohio, county and city aforesaid, or that said State board of equalization designedly or intentionally placed a higher valuation thereon, or that the tax levied and assessed in the
69 valuation of said shares was or is in violation of law, unauthorized or void. Said defendant further denies that the levying and assessing of said tax against said complainant directly is in violation of the act of Congress of the United States under which said complainant is incorporated; he denies that the tax, the collection of which said complainant by its said bill seeks to enjoin is in violation of any act of Congress of the United States, or is levied or assessed in a manner which is in violation of any act of Congress of the United States. He denies that the shares of the capital stock of said complainant, the property of its shareholders, are not taxed by any law prescribing any uniform rule for the valuation of the property of said shareholders and the levying of taxes thereon, as provided by the constitution of the State of Ohio; he denies that the acts of the General Assembly of the State of Ohio, under and by virtue of which the taxes in said State are or purport to be assessed, do not have a uniform operation throughout said State as required by the constitution of the said State. He denies that the property of the owners and holders of the shares of the capital stock of said complainant, the property of its shareholders, are not taxed by any law prescribing any uniform rule for the valuation of the property of said shareholders and the levying of taxes thereon, as provided by the constitution of the State of Ohio; he denies that the acts of the General Assembly of the State of Ohio, under and by virtue of which the taxes in said State are or purport to be assessed, do not have a uniform operation throughout said State as required by the constitution of the said State. He denies that the property of the owners and holders of the shares of the capital stock of said complainant in said complainant corporation is not valued and taxed the same as the property of individuals, or that the burden of taxation upon the shares of said stockholders in

said corporations is very much or any greater than upon the property of individuals; he denies that equality has not been preserved in the valuation of said shares for taxation as compared with other property in the locality where said complainant is established; he denies that the valuation of said shares in proportion to the value thereof is fully twice as much as, or any more than, the valuation fixed upon other property. While admitting that the constitution and laws of Ohio contain provisions in reference to taxation substantially as quoted in said bill of complaint, this defendant says that all the provisions of said constitution and laws upon that
70 subject should be considered in order to determine the force and effect of those quoted, and he denies that a large amount of moneyed capital in the hands of individuals invested in promissory notes and other obligations and credits is expressly exempted from taxation in said State. He denies that any of the shareholders of said banking association, at the times named in said bill of complaint, were indebted or owing to others of *bona fide* debts, a sum in excess of the credits from which, under the laws of Ohio, he was entitled to deduct said debts, to an amount equal to the value of his said shares or any part thereof. He denies that either of said shareholders was then indebted in any sum whatever, or that, even if any of them was so indebted as claimed in said bill of complaint, he is hereby entitled to deduct the excess of such indebtedness over his credits from the assessed value of his said shares, or that for any reason said shares of stock should not have been placed on the tax duplicate and no tax assessed thereon. This defendant denies the averment in said petition that neither of said shareholders authorized any one to list his said shares for him. He denies that it was necessary for said shareholders so to do; he denies that at the time of the return and statement by the cashier of said banking association to the auditor of Cuyahoga county, neither said bank nor its cashier had knowledge of the indebtedness of said shareholders, if any such indebtedness existed; he denies that on the 17th day of December, 1885, or at any time, said complainant or any of said shareholders made due and legal showing and proof to the auditor of said county or to this defendant of the existence of said alleged indebtedness, or demanded that the same should be deducted from the assessed value of the shares owned by such shareholders and returned by said complainant. He denies that any sum whatever should be deducted from the valuation of the shares of the capital stock owned by said shareholders named in said bill of complaint. This defendant further denies that the taxes so levied and assessed on the shares of said complainant's stock are, for the reasons alleged in said bill of complaint, or for any reason, unjust, illegal or void. He denies that the laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him or that such is the uniform practice throughout the State. He denies that the proceedings of said State board of equalization were in any respect irregular or illegal, or were for any reason of no binding obligation, or that said State board of equalization proceeded arbitrarily to increase the valuations for taxation upon said

complainant, and upon other national banks of the said
71 city, and upon the shareholders thereof without any opportunity for hearing. He denies that the taxation of the shares of said complainant's stock is at a much or any greater rate than is assessed upon other moneyed capital in the hands of individual citizens of said State of Ohio. He denies that the necessary effect of the proceedings had in the assessment and levy of the taxes standing against said complainant, and the shares thereof owned by its said shareholders, has been to deprive said complainant or said shareholders either in the matter of valuation or equalization of any of the benefits of the constitution or general laws of said State of Ohio, or to take from complainant or said shareholders any security afforded them by the limitations of said act of Congress, or to impose upon said complainant or said shareholders any undue or excessive exactions or any such exactions as to make the franchises granted by said act of Congress comparatively valueless. He denies that irreparable injury would be done either to complainant or to said shareholders, or any of them, by the enforcement of the lien created on said shares by section 2829 of the Revised Statutes of Ohio, or, that said complainant would thereby be subjected to great loss of standing or credit, or subjected to any other injuries for the redress of which the law affords no remedies, or that the franchise of said complainant granted by said act of Congress would be greatly impaired or rendered nearly useless, or that the disability imposed upon complainant to make transfers or pay dividends of, or upon said shares, upon which said taxes remains unpaid, would damage all the ordinary business of complainant, or introduce confusion or uncertainty into its transactions, or incur any loss of public confidence; or that if said complainant should pay the taxes for those of its shareholders whom by law it may pay for and deduct the amount from their dividends or other funds of said shareholders in its hands, it would be subjected legally to any suit which might be brought against it by said shareholders, or any of them, for so doing; or that said complainant would be subjected to great expense or irreparable injury by so doing, or that a great number of suits would be rendered necessary to adjust the rights of all the parties. And this defendant further denies each and every allegation in said bill of complaint not hereinbefore admitted or expressly denied. To the contrary of all of which this defendant avers that by and under the act of Congress of the United States, in said bill mentioned, the shares of stock
of said complainant are personal property, and in and by said
72 act it is permitted that the legislature of each State might determine and direct the manner and place of taxing all the shares of the national banking associations organized and established thereunder, located within such State, subject only to two restrictions, viz:

1st. That the taxation thereon should not be at a greater rate than should be assessed upon other moneyed capital in the hands of individual citizens of such State, and,

2nd. That the shares owned by any non-resident of the State should be taxed in the city or town in which such association should

be located and established. And this defendant says that the taxes mentioned in said complainant's bill, assessed upon the shares of said complainant is not taxed at a greater rate than is imposed by the State of Ohio and the laws thereof, upon other moneyed capital in the hands of the individual citizens of said State, and individual citizens of said county, city, and of said State, and that the shares of the non-resident shareholders are taxed in said city of Cleveland where said complainant's bank is established. And this defendant further says that said annual State board for the equalization of the shares of incorporated banks, consisting of the governor, auditor of State and attorney general of said State, did meet on the third Tuesday of June, A. D. 1885, at the office of said auditor of State at Columbus, and having before them the statement and returns of the complainant's cashier and the valuation of the complainant's shares fixed by said county auditor, with like returns and valuations of all the incorporated banks within the State of Ohio, proceeded to consider the same, and, having heard all complaints, equalized the value of the shares of all the incorporated banks within said State as determined upon and reported by the county auditor to said board and to said auditor of State, and thereupon made an equalization of the valuation of all the shares of all the incorporated banks within the State of Ohio according to the rules prescribed by the laws of said State for valuing and equalizing values of real and personal property; that in acting upon the shares of said complainant for the purpose of equalizing their value for taxation aforesaid, said annual State board of equalization was governed by the same rules and adopted and used the same methods as those by which it was governed and which is used in equalizing the shares of all other incorporated banks for taxation, and the same as governed and were used by all other equalizing boards and all other officers of said State, county and
73 city in the valuing and equalizing of all other property for taxation. That neither the said complainant or its cashier or other officers, nor any of its shareholders appeared before said board or presented to it any complaints or any statements of the several alleged matters and things now set forth in said bill of complaint. That it appearing from said cashier's return that the capital stock of complainant, taken together with its surplus and undivided profits, amounted to $1,042,730.41, and that said county auditor acting upon said return had fixed the value of all the shares of the said complainant for taxation at $444,820 (after having deducted from said value, the value of said real estate), said annual State board of equalization governed by the rules and adopting and using the methods aforesaid, and acting wholly within the limits and discretion allowed them by the statute of said State, increased said valuation so as aforesaid, fixed by said county auditor, by adding thereto $50,954.76, making said valuation of all of said shares $495,774.76, and each of said shares thereof (the par value of which is $100), $49.57, which sum is not in excess of the true value in money of said shares, but on the contrary, is much less than the true value in money thereof. And said board having equalized and fixed the valuation of said shares of complain-t, said auditor of

State thereupon transmitted to the auditor of Cuyahoga county the valuation of the shares of said complainant, as aforesaid, determined and fixed by said State board. And the said county auditor of said Cuyahoga county, thereupon, as he was required by law, did place upon the duplicate of said county, with all the other taxable property in said county, the said shares of said complainant at the valuation so fixed upon and determined by said State board of equalization, and assessed upon the same merely the same rate as was assessed upon all other property upon the county duplicate in the city of Cleveland for the said year of 1885, at the place where said complainant is located and doing business, and being the same rate as that assessed upon the moneyed capital of the individual citizens of said State, resident in said city of Cleveland. And this is the same tax mentioned and described in the complainant's bill. And this defendant further says that, under the laws of Ohio, he, as the treasurer of said county, has no duty or authority in respect to the assessment or appraisement of property for taxation; that the auditor of said county has no further duty or authority in respect to the assessment or appraisement for taxation of the shares
74 of incorporated banks after he has fixed the total value of such shares and has made out and transmitted to the annual State board for the equalization of the shares of incorporated banks a copy of the report made by the cashier of the several banks, together with the valuation of such shares as fixed by said auditor in pursuance of section 2766 of the Revised Statutes of Ohio; that if the shareholders of said complainant were entitled to any deduction from the value of their said shares on account of their individual indebtedness (which this defendant does not admit), due showing and demand therefor should have been made to said auditor of said county before he fixed the value of said shares, and transmitted the same to the auditor of State as aforesaid; but that no such showing or demand was made to said county auditor, nor was any showing or demand, or any complaint in respect thereto made to said State board of equalization. Defendant says that at the time when said complainant claims that its said shareholders made demand for the deduction of their alleged indebtedness from the valuation of their said shares, the entire process of the appraisement and equalization of the valuation of such shares had long since been completed, and neither this defendant nor said county auditor had then authority to allow any deduction whatever from the valuation of said shares as the same had been fixed and determined. And the said defendant further answering denies that the said complainant is entitled to the relief, or any part thereof in the said complaint demanded, and he prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

HADDEN, DISSETE & COLLISTER,
JAMES LAWRENCE,
CLARENCE BROWN,
Solicitors for Defendant.

UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, }

H. N. Whitbeck, being duly sworn, deposes and says that he is the defendant in the foregoing answer; that he has read the same and knows the contents thereof and that the same is true, of his own knowledge, except as to the matters and things therein contained on information and belief, and as to such matters he verily believes them to be true.

H. N. WHITBECK.

75 Sworn to before me by the said H. N. Whitbeck, and by him subscribed in my presence this 21st day of April, A. D. 1886.

[SEAL.] L. E. MEACHAM,
Deputy Clerk Common Pleas Court, Cuyahoga County, Ohio.

And afterwards, to wit, on the 3rd day of May, A. D. 1886, the following replication was filed in this cause in said court, viz.:

Replication.

Circuit Court of the United States, Northern District of Ohio.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio,
vs.
HORATIO N. WHITBECK, Treasurer, etc. } No. 4411. In Equity.

The replication of the above-named complainant to the answer of the above-named defendant.

The repliant saving and reserving to itself now and at all times hereafter all and all manner of benefits and advantage of exception which may be had or taken to the manifold insufficiences of said answer for replication thereunto says, that it will aver, maintain and prove the bill of complaint to be true, certain and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this that any other matter or thing whatever in the said answer contained, material and effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied is true; all which matters and things this repliant will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by the said bill it has already prayed.

BOYNTON & HALE,
Solicitors for Complainant.

76 And afterwards, to wit, on Saturday, the 6th day of November, a day of the October term, A. D. 1886, of said court, the following order was entered in this cause in said court, viz:

Order Appointing Special Master.

In this cause it is ordered that A. J. Ricks, because he is experienced in matters of accounting, be appointed a special master to examine the evidence and record now on file and to report who, if any, of the shareholders of the complainant, on the day preceding the second Monday of October, 1885, had *bona fide* indebtedness which should have been deducted from the valuation of the shares.

And afterwards, to wit, on the 15th day of November, A. D. 1886, the following affidavit was filed in this cause in said court, viz:

Affidavit of T. P. Handy.

STATE OF OHIO, }
Cuyahoga County, } *ss:*

Affidavit.

T. P. Handy, being first duly sworn, on his oath says that the Mercantile national bank is a corporation organized and doing business at Cleveland, Ohio, under the act of Congress known as "national bank act," and the act amendatory thereto, and its shareholders are subject to the provisions of and entitled to the benefits conferred by section 5219 of the Revised Statutes of the United States; that on the day next preceding the second Monday of April, A. D. 1885, and at the time the cashier of said bank made out and returned to the auditor of Cuyahoga county, Ohio, a statement of the names and residences of the stockholders of said bank with the number of shares of the capital stock owned and held by each and the par value thereof for the year 1885, to wit, between the first and second Mondays in May, A. D. 1885, as required by section 2765 of the Revised Statutes of Ohio, affiant was an owner of 600 of said shares of the par value of $100 per share, and the same were returned, as belonging to him, by said cashier and from said day next preceding the second Monday of April, 1885, he has continued to own and now owns said number of shares of stock in said bank. Affiant further says that he has never been required by any authority to list said shares for taxation; that when the same were required to be and were so returned for taxation by said
77 cashier, and also on the day next preceding the second Monday of April, 1885, affiant was indebted and owing to others in legal *bona fide* debts the sum of $80,000 over and above any and all credits which by law he was entitled to deduct therefrom, and from which excess of debts over credits should be deducted said 600 shares of said stock. Affiant says that in making up the sum of said debts owing by him in excess of the credits deducted therefrom, he has not included any claim or obligation which section 2730 of the Revised Statutes of Ohio requires to be rejected, which he is ready to make, if required or permitted by an exhibit of such indebtedness. Affiant further says that the tax and assessment

upon said shares were made thereon in excess of the amount for which the same were assessable, without his authority or consent, and the same were listed by said cashier in the manner aforesaid without any authority from the affiant for so doing and in sole compliance with the statute, and affiant has had no opportunity or way provided to secure said deduction of credits from said shares other than to seek said deduction from the value of the shares since they were carried on the duplicate.

T. P. HANDY.

Sworn to before me, and in my presence subscribed this 16th day of December, A. D. 1885.

NORTON T. HORR,
Notary Public.

And afterwards, to wit, on the 8th day of November, A. D. 1886, the following master's report was filed in this cause in said court, viz:

Report of Special Master.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, *vs.* H. N. WHITBECK, Treasurer. } In Equity. No. —.

To the honorable the judges of the circuit court:

By an order entered in this case the undersigned was ap-
78 pointed a special master to ascertain and report from the testimony and record, who, if any, of the shareholders of the complainant on the day preceding the second Monday of April, 1885, had *bona fide* indebtedness which should have been deducted from the valuation of the shares of the capital stock of complainant bank. The master reports that having examined the evidence and heard the claim of counsel, he finds and reports that all the shareholders are entitled to the deductions as charged in the bill, except the following, who should be taxed for the amount stated, viz: E. R. Perkins, had credit- subject to taxation above his indebtedness on the day named to the sum of $4,374.40; C. L. Murfry had credits subject to taxation above his indebtedness on the day named to the sum of $724; Robert L. Chamberlain had credits subject to taxation above his indebtedness on the day named to the sum of $4,448; James Parmelee had credits subject to taxation above his indebtedness on the day named to the sum of $3,113.60; James Barnett had credits subject to taxation above his indebtedness on the day named to the sum of $17,792. All of which is respectfully submitted.

A. J. RICKS,
Special Master.

And afterwards, to wit, on the 8th day of November, being a day of the October term, A. D. 1886, of said court, the following decree was entered in this cause in this said court, viz:

Decree.

THE MERCANTILE NATIONAL BANK
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County. } Decree.

At this term the parties appeared by their solicitors and this cause came on for hearing upon the merits, and the court being fully advised in the premises from the testimony and exhibits and special master's report adduced in open court, we find all the allegations of the bill to be true, except those allegations which charge that James A. Barnett, Robert L. Chamberlain and James Parmelee were
79 the owners of shares of capital stock of said bank, from which they were entitled to deduct, respectively, an indebtedness of theirs, which allegations the court finds are untrue. And it appearing to the court that the amount admitted to the court in said bill to be due to said respondent, has, pursuant to a former order of this court, been paid by said complainant to said respondent, and by him received, it is therefore ordered, adjudged and decreed that said respondent and his successors in office be forever enjoined from proceedings or attempting to collect or from collecting any part of or portion of said tax or assessment remaining unpaid, except the taxes levied upon the valuation of the shares of capital stock of complainant as fixed by the county auditor owned by said Barnett, Chamberlain and Parmelee amounting to $659.29 the amount of tax hereby enjoined being $3,967.55, and it is therefore ordered, adjudged and decreed that said respondent or his successors in office pay the costs in this suit to be taxed for which it is ordered that execution may issue as upon judgments at law.

And afterwards, to wit, on the — day of ——, A. D. 1886, the following proceedings were had in this cause in said court, viz:

Decree Vacated.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, at the October Term, 1886.

THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio. } No. 4411.

The above-entitled cause having been submitted to the court, and the decree having been entered in said cause in favor of the complainant therein, and the defendant desiring to present the question arising in said cause to the Supreme Court of the United States to be finally decided, and for that purpose intending to appeal said

cause No. 4411; on motion of said defendant it is now ordered by the court that the decree- heretofore entered in the above-entitled causes numbered 4411, 4412, 4413, 4414, 4415, 4416, 4417
80 and 4418, be, and the same hereby are, set aside and vacated to await further orders of the court, and that the said several complainants have leave to apply any time hereafter to have said decree re-entered.

Approved:

HOWELL E. JACKSON,
Circuit Judge.

And afterwards, to wit, on the 8th day of April, 1887, the decree was rendered in the above-entitled case, which decree reads and is in the words and figures following, to wit:

April Term, A. D. 1887, to wit, Friday, April 8th, A. D. 1887.

Present: The Honorable Howell E. Jackson, United States circuit judge, and the Honorable Martin Welker, United States district judge.

THE MERCANTILE NATIONAL BANK, Cleveland, Ohio,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio.
} No. 4411. Chancery.

At this term the parties appeared by their solicitors, and this cause came on for hearing upon the merits, and the court being fully advised in the premises from the testimony and exhibits and special master's report, adduced in open court, do find *that* all the allegations of the bill to be true, except those allegations which charge that James A. Barnett, Robert L. Chamberlain and James Parmelee were the owners of shares of capital stock of said bank from which they were entitled to deduct, respectively, any indebtedness of theirs, which allegations the court find are untrue. And it appearing to the court that the amount admitted in said bill to be due the said respondent, has, pursuant to a former order of this court been paid by said complainant to said respondent and by him received. It is therefore ordered, adjudged and decreed that said respondent and his successors in office be forever enjoined from proceeding or attempting to collect or from collecting any part or portion of said tax or assessment remaining unpaid except the tax levied upon the valuation of the shares of the capital stock
81 of complainant as fixed by the county auditor owned by said Barnett, Chamberlain and Parmelee, amounting to $659.20, the amount of tax hereby enjoined being $3,967.55, and it is therefore ordered, adjudged and decreed that said respondent or his successors in office pay costs in this suit to be taxed at $183.47 for which it is ordered that execution may issue as upon judgments at law.

Conclusions of Law.

First. The master finds the issues made by the bill and answer, relating to the former adjudications of the question of the right to deduction of legal *bona fide* indebtedness of the stockholders from the value of their shares in determining their value for taxation, with the defendant; that such fact or right was not directly involved in the actions set up in the bill and it was not therein by said courts adjudicated and decided, and the fact carried into judgment in favor of said bank, that its stockholders were entitled to said deductions of indebtedness from the value of their shares, under the same legislation now existing on the subject, both State and national, and that said judgments are not in full force and effect, as against said defendant. The rule as to such matters adopted by the courts generally is that, "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

Second. The master further finds upon the issue made by the bill and the answer thereto, relating to the question of the right of the shareholders of the stock of said complainant bank, to a deduction of their legal, *bona fide* indebtedness from the value of their shares, in determining their valuation for taxation for the said respondent, and finds that upon the evidence adduced, and the law governing the same, that none of said shareholders, nor said complainant bank is entitled to the deduction asked for in the bill of complaint nor to any part thereof. The decision of the United States Supreme Court in the case of The First National Bank of Wellington, Ohio,
82 against H. P. Chapman, 173 U. S., p. 205, is conclusive on this question.

Third. Upon the issue raised by the second defense set out in the amendment to defendant's answer, the master finds in favor of said complainant and against said defendants; and finds the plea contained in the amendment does not constitute a defense to the matters contained in the bill.

The governor, auditor of State and attorney general constitute the State board for equalization of the shares of incorporated banks.

When the amount of taxes to be remitted under the provisions of section 167 shall exceed $100, the so-called board for remission of taxes is to be composed of precisely the same persons. An appeal, therefore, from the decision of those officers concerning a valuation for the purposes of taxation to the same persons sitting as a board of remission has not the merit of appealing from Philip drunk to Philip sober. Such a proceeding would be an anomaly in jurisprudence and highly absurd. But the functions of the board as organized under section 167 are altogether different from those of

the board organized under section 2808. One is to pass judicially upon a question of fact relative to the value of property to be assessed; while the other is for the remission of taxes that have been illegally assessed and such penalties as have accrued or may accrue in consequence of the negligence or error (clerical or otherwise) of any officer required to do any duty relating to the assessment of property for taxation.

Section 167 was not intended to correct the errors of judgment of such officers where they have discretionary powers, but such other errors as grow out of the illegal acts of clerical errors of such officers.

The board of equalization ceased to exist for any purpose when it adjourned *sine die*, December 4, 1897. It could not resuscitate itself by reorganizing under a different name.

The board provided for under section 167 has the same powers only with respect to amounts above one hundred dollars that the auditor has with respect to amounts below that sum. The supreme court of Ohio has decided in case of Black *et al.*, *vs.* Hagerty *et al.* (vol. 42, Law Bulletin, No. 7, page 144): "That the power conferred upon the auditor of State to remit taxes does not authorize him to reduce a valuation of real estate made in pursuance of law by a local board of equalization merely because he believes the valua-
83 tion to be excessive." If the auditor is powerless to afford relief in such case, then the full board is powerless to afford the relief asked for in this case, and the complainant having exhausted all other remedies, was forced to resort to a court of competent jurisdiction to obtain redress. And there is no doubt that jurisdiction in such causes is conferred upon this court.

Fourth. The only remaining question is: Did the board of equalization of the shares of incorporated banks have jurisdiction to increase the valuation of the shares of the complainant as fixed by the auditor of Cuyahoga county? And upon this question the master finds for the complainant.

It is admitted by counsel that if the State board of equalization had met on the third Tuesday of June, 1897, at the office of the auditor of State, as provided by section 2808, R. S., and had adjourned from day to day, or to any day certain named in the record of their proceedings, then the complainant would have been chargeable with notice.

But the board, as shown by the finding of facts herein, after meeting and organizing on the third Tuesday in June, of said year, adjourned to meet at the call of the secretary. No day was named in the record for the future meeting of the board, and although they met on divers other days stated in the findings of fact, they "adjourned," without naming a day for a future meeting, and such adjournment was in operation and effect an adjournment *sine die*. Having adjourned on the day fixed by law for their meeting, without taking action upon the valuation of complainant's shares, the complainant is no more chargeable by law with notice of any subsequent meetings than if the law had failed to provide a day for their meeting. The fact that on that day the statement of the bank and the report of the auditor thereon had not been laid before the

board, makes no difference. It only suggests a reason why the bank did not attend on the 15th of June.

In argument counsel for the defendant maintained that the statements filed by the bank's cashier was in effect a "hearing," a presentation of the facts upon which complainant submitted its case; on this suggestion Judge Fields, in the Railroad-tax cases, 13 Federal Reports, at page 758, says:

"The presentation to the State board by the corporation of a statement of its property and of its value, which it is required to furnish, is not the equivalent to a notice of the assessment made and of an opportunity to be heard thereon. It is a preliminary
84 proceeding, and until the assessment the corporation cannot know whether it will have good cause of complaint. No hearing upon the statement presented is allowed, and when the assessment is made the matter is closed; no opportunity to correct any errors committed is provided. The presentation of the statement can no more supersede the necessity of allowing a subsequent hearing of the owners, that the filing of a complaint in court can dispense with the right of the suitor and his contestant to be there heard.

There being, then, no provision of law giving to the company notice of the action of the State board, and an opportunity to be heard respecting it, is the assessment valid? Would the taking of the company's property in the enforcement of the tax levied according to the assessment be depriving it of its property without due process of law? It seems to us there can be but one answer to these questions. There is something repugnant to all notions of justice in the doctrine that any body of men can be clothed with the power to finally determine the value of another's property, according to which it may be taxed, without affording to him an opportunity of being heard respecting the correctness of their action."

If the board reconvenes on some day which has not been named in the previous adjournment, actual notice of some kind must be given to tax-payers who are to be effected by the action of the board at such meeting. Without such notice no opportunity is given to the tax-payer to be heard, and section 2809 clearly provides that the tax-payer may have an opportunity to make complaint either of the action of the county auditor in fixing the valuation of his bank shares, or of any proposed increase by the State board of equalization, and if no such notice be given, "taxes" which may be exacted by the officers under color of law are mere arbitrary burdens upon the tax-payer. This is not "due process of law" within the meaning of any system of taxation which expressly authorizes and provides that the tax-payer may have a hearing upon the question of the valuation to be placed upon his property for taxation purposes. There is nothing in the suggestion that the complainant should have shown that it made an attempt to be heard. The law does not require that the citizen should perform an idle ceremony to protect a constitutional right. The complainant was satisfied with the valuation fixed by the county auditor. It had no notice of any kind that the State board contemplated any action that would increase that valuation. Why should he ask to be heard under such circum-

stances? Immediately after the action of the board in
85 increasing the valuation of the complainant's shares, the board adjourned *sine die*. The bank was as effectually debarred of a hearing as if the law had provided for none. It would be mockery to assert that the citizen had been protected because there had been a general opportunity for a hearing on the days the board were actually in session, but of which we had no legal notice. A doctrine which would require a citizen of Cleveland, who had no knowledge in fact of the proposed action by the board, to attend at the auditor's office at Columbus every week day from the 15th day of June to the 4th day of December and watch the proceedings of the board in order to protect his rights, with the danger of losing a hearing if he should for a moment slack his vigilance, would be grotesque in its absurdity, monstrous in its injustice and subversive alike of the spirit and the letter of the law.

It is no justification of the action of the board of equalization in raising assessments without notice that the conclusion reached by them was fair and accorded with substantial justice. (Lewis *vs.* Bishop, 53 Pac. 165.)

From grave considerations of public policy the law will presume an injury, if no notice is given.

The irregularity complained of in the State Railroad-tax cases, 92 U. S., at page 575, is not the same as in this case. In that case the board of equalization was dealing with aggregates, and was equalizing aggregate valuations by counties, just as the decennial board of equalization in Ohio deals with the assessed valuations by counties. Where the State board finds that the aggregate value of any county is below the average as compared with other counties, it may direct the county auditor to increase the aggregate by a certain percentage, and that percentage is added to the valuation of individual tracts or parcels, but there is no discrimination as between the individual tax-payers, and no notice is provided for. In such a case it would be unreasonable for each individual tax-payer to receive a notice, for "the expense of giving such notices the delay of hearing each individual would render the exercise of the main function of this board impossible."

But when the State board encroaches upon the domain of the county auditor in an attempt to adjust and equalize valuations of property within the county as between individuals, its proceedings should be governed by the same rules that the auditor or county boards are in such cases.

Section 2809, under which the State board assumed to act,
86 provides that, "said board shall hear complaints and equalize the value of said shares according to the rules prescribed by their title for valuing and equalizing the values of real and personal property."

The rules for valuing and equalizing values of real and personal property are stated in section 2804, R. S., which is as follows:

SECTION 2804. "The annual county board shall not increase or reduce the valuation of any real estate except in cases of gross irreg-

ularity, and then only upon reasonable notice to all persons directly interested and an opportunity for a full hearing of the question involved."

The conclusions of Justice Field, stated in the Railroad-tax cases, 13 Federal Reporter, at page 752, are exactly in point in this case. He says: "The necessities of revenue for the support of government will not admit of the delays attendant upon judicial proceedings in the courts of justice. The statute fixes the rate of taxation upon the value of the property, and appoints officers to estimate and appraise the value. Due process of law in the proceeding is deemed to be pursued, when, after the assessment is made by the assessing officers upon such information as they may obtain, the owner is allowed a reasonable opportunity, at a time and place to be designated, to be heard respecting the correctness of the assessment, and to show any errors in the valuation committed by the officers. Notice to him will be deemed sufficient, if the time and place of hearing be designated by statute. But whatever the character of the proceeding, whether judicial or administrative, summary or protracted, and whether it takes property directly, or creates a charge or liability which may be the basis of taking it, the law directing the proceeding must provide for some kind of notice, and offer to the owner an opportunity to be heard, or the proceeding will want the essential ingredient of due process of law. Nothing is more clearly established by a weight of authority absolutely overwhelming than that notice and opportunity to be heard are indispensable to the validity of the proceeding."

The authorities cited by counsel in briefs filed herein constrain me to adopt the conclusions of Justice Field in his opinion in the Railroad-tax cases, above referred to.

The master, therefore, finds that the complainant bank has paid of the taxes assessed against its stock for the year 1897 the sum of $12,210.62, in compliance with the former order of this court, and that there is due from it the further sum of $3,524.78 on account of said taxes for said year, but that the remaining $3,726.90 of the tax for that year assessed against its stockholders, by reason of the
87 addition made by the State board is improperly and unlawfully assessed.

All of which is respectfully submitted.

IRVIN BELFORD,
Special Master.

October 31st, 1899.

The undersigned report- and files herewith the evidence, stipulations of counsel and proofs transcribed from the stenographic notes thereof taken before the examiner and by him duly certified, contained in four separately bound volumes, indorsed part first, part second, part third and part fourth, and the depositions of G. W. Taylor, W. D. Guilbert and Lewis D. Boynton, all of which proofs have been duly filed in said cause. All of which proofs and exhibits are attached hereto and made part of this report.

All of which is respectfully submitted.

IRVINE BELFORD,
Special Master.

Dated Oct. 31st, 1899.

Endorsements on report of Irvin Belford, special master.

No. 5714. U. S. circuit court, northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland, O., *vs.* R. S. Hubbard, as treasurer of Cuyahoga Co. Report of Irvin Belford, special master. Filed Oct. 31, 1899. Irvin Belford, clerk, U. S. circuit court, N. D. O.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio.	Chancery.	No. 5714.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages, embraced in volume number 1, contain a full and true copy of the final record up to and including the report of the special
88 master and proceedings had in said cause; and there is contained in volumes 2 and 3, a correct, full and true copy of the residue of the final record, including the petition for appeal, assignment of errors and all other proceedings in said cause, and there is annexed to and transmitted with such record a true copy of the opinion of the court, documentary evidence, depositions and testimony admitted in evidence in said cause (except such testimony as is excluded by stipulations of counsel recorded herein), the originals of all which copies are now in my custody as clerk of said court.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at Cleveland, in said district, this 31st day of January, A. D. 1900, and in the 124th year of the Independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk,*
By JNO. VAN NOSTRAN, *Deputy.*

Stipulation as to Exclusion of Certain Testimony.

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK, Plaintiff, *vs.* R. S. HUBBARD, Treasurer, Defendant. } Stipulation. No. 5714.

The parties to this cause stipulate hereby that the clerk in preparing the transcript of the record of this cause on appeal to the circuit court of appeals, shall omit therefrom the following portions which do not properly belong or appertain to said record.

All affidavits of stockholders except those filing claims as stockholders of Mercantile national bank.

All records of prior adjudications in which the Mercantile nat'l bank was not the party complainant.

Jan. 19, 1900.

W. W. BOYNTON AND
N. T. HORR,
Plaintiff's Solicitors.
P. H. KAISER,
Of Counsel for Defendant.

89 Endorsements on stipulation: Mercantile National Bank *vs.* R. S. Hubbard, treas. 5714. Stipulation. Filed Jan. 19, 1900. Irvine Belford, clerk U. S. circuit court, N. D. O.

Stipulation as to Exclusion of Certain Testimony.

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK, Plaintiff, *vs.* R. S. HUBBARD, Treasurer, Defendant. } Stipulation. No. 5714.

The parties to this cause hereby stipulate, that of the testimony offered by the parties hereto in the form of depositions, or otherwise and reported by the examiner and the master, in part fourth, there shall only be transcribed and included in the transcript the testimony of Peter R. Fahey, G. N. Calvert, S. C. Hale, Frank J. Smith Charles L. Murphey and W. D. Guilbert, together with the stipulation at page 325 of the fourth part of the printed testimony, and the deposition of G. W. Taylor, except the copies exhibited by him of the reports of national banks in Cleveland, other than that of the plaintiff. The remainder of the testimony in part fourth of said testimony is only pertinent to and was offered in evidence in the

cases brought by other plaintiffs, and it is only such evidence that is agreed to be excluded from the record herein.

Jan. 26, 1900.

THE MERCANTILE NATIONAL BANK,
By W. W. BOYNTON &
NORTON T. HORR, *Its Attorneys.*
R. S. HUBBARD,
By P. H. KAISER AND
F. L. TAFT, *His Att'ys.*
SMITH W. BENNETT, *One of His Attorneys.*

Endorsements on stipulation: 5714. Mercantile Nat'l Bank *vs.* R. S. Hubbard, treas. Stipulation. Filed Jan. 27, 1900. Irvin Belford, clerk, U. S. circuit court, N. D. O.

90 U. S. Circuit Court, N. D. Ohio, E. D.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} No. 5714.

The defendant has due notice that the plaintiff will proceed to take testimony on its behalf before Irvin Belford, examiner, at the office of the clerk of the United States circuit court in the Federal building at Cleveland, Ohio, at 10 o'clock a. m., Tuesday, August 16th, 1898, and will continue the same under adjournments from day to day or otherwise as may be agreed upon.

P. H. KAISER,
Att'y for Defendant.

Aug. 13, 1898.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Respondent.
} Depositions.

The examination of witnesses, beginning on the 16th day of August, A. D. 1898, at 10 o'clock a. m., on behalf of the complainant, before me, Irvin Belford, special examiner, at the office of the clerk of the United States circuit court in the city of Cleveland, Ohio, in said district, in the above-entitled cause now depending and undetermined in the circuit court of the United States for the northern district of Ohio, in pursuance of due notice to the defendant's solicitors.

Such testimony is to be taken orally and be taken down by S. Louise Patteson, a skillful stenographer, approved by both parties, and by her be put into typewriting.

91 *Appearances.*

Hon. W. W. Boynton, counsel.
Messrs. Horr & Uhl, by Mr. Horr.
Messrs. Webster & Cook, by Mr. Cook,
Messrs. Hoyt, Dustin & Kelley, by Mr. Dustin,
Solicitors for complainants.
Hon. F. S. Monnett, attorney general,
Mr. Smith W. Bennett, ass't att'y general,
Hon. P. H. Kaiser, solicitor for Cuyahoga county,
Solicitors for respondents.

In the United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Plaintiff,
vs.
R. S. HUBBARD, Treasurer of Cuyahoga County, Ohio, Defendant.
} Stipulation.

It is stipulated by the parties hereto that there are two hundred and fifty (250) private, unincorporated banks in the State and were in the year 1897.

The above fact is subject to all objections by the defendant for irrelevancy or incompetency.

F. S. MONNETT,
Att'y for Def't.
P. H. KAISER,
Att'y for Def't.
W. W. BOYNTON,
Att'y for Pl'ff.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Respondent.
} Stipulation.

92 It is stipulated that all testimony taken in this case by either party, may and shall be used in the following-entitled causes, with the same effect, so far as competent, as if originally taken for use therein:

National Bank of Commerce *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

Commercial National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

Central National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

National City Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

Western Reserve National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

First National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

Cleveland National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

State National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

Union National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

Park National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

Euclid Avenue National Bank *vs.* R. S. Hubbard, as treasurer of Cuyahoga county, O.

W. W. BOYNTON,
HORR & UHL,
WEBSTER & COOK,
A. C. DUSTIN,
For Plaintiffs.
F. S. MONNETT, *Att'y Gen.*,
P. H. KAISER,
For Defendant.

THEODORE M. BATES, a witness produced on behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. State your name, age and place of residence.
A. T. M. Bates, age 40, residence Cleveland, 76 Mayfield St.
Q. 2. What is your business?
A. Attorney at the present time.
93 Q. 3. If at any time you were on the board of equalization of Cleveland, you may state the fact and when?
A. I was a member of the board of equalization and assessments of the city of Cleveland for four years, beginning with May, 1892.
Q. 4. Consecutive years?
A. Consecutive years.
Q. 5. Who were associated with you?
A. Mr. J. B. Molyneaux, Mr. B. F. Phinney, during all the time I was a member of the board.
Q. 6. How continuously was the board in session during those years?
A. All the time.
Q. 7. Engaged in what?
A. In the equalization of personal property and real estate in the city of Cleveland.
Q. 8. When did you cease connection with the board?

A. About May 1st, 1896.

Q. 9. What has been your connection with it since, by way of practice or otherwise?

A. I have had a large amount of practice representing different persons and corporations in the adjustment of their tax matters before the board, since I was a member.

Q. 10. During your membership of the board, and since if you know, at what percentage of the face or actual value of money were obligations such as bonds, notes, credits and the like listed at by the board of equalization for the city?

To which question Mr. Monnett, in behalf of defendant, objected.

A. It was the rule of the board, to list that class of securities in taxable valuation at 60 per cent. of what was considered their actual cash value, during the time I was a member of the board, and it has been so since that time as far as my practice before the board has shown.

To which answer defendant objected and moved the court to withdraw the same as incompetent and irrelevant.

Q. 11. Do you know of any change in the rule by the board since you left the board?

To which question defendant objected.

A. There has not been any change to my certain knowledge, up to the time that that board continued in existence.

Defendant objected to the answer and moved the court to withdraw the same as incompetent and irrelevant.

Q. 12. When did the board go out of existence?

94 A. This last month, in July.

Q. 13. In consequence of a ruling of the supreme court?

A. Yes, a judgment of ouster, I believe.

Q. 14. Prior to the year 1892, you may state what knowledge you had of the percentage at which such securities, including stocks, were listed in the county of Cuyahoga?

To which question defendant objected.

A. I understood it was on the same basis, 60 per cent. All the records of our predecessors practically bore that out.

To which answer defendant objected, and moved the court to withdraw same from the record.

Q. 15. Do you know at what rate or percentage of the actual value the auditor of Cuyahoga county listed property, which in fact was listed by him during those years?

A. Do you mean personal property?

Q. 16. I mean stocks, bonds, promissory notes, credits and the like.

Same objection by defendant.

A. I don't know positively.

Q. 17. Did your board, upon omissions of personal property of the kind above mentioned, call in people to supply their omissions?

A. Yes.

Q. 18. Was that a matter of frequent occurrence?

A. Yes.

Q. 19. At what percentage of actual value was the listing made of such property?

To which question defendant objected on the ground that said board's records are the best evidence, and on the further ground that said board was an illegal body, and that the time referred to does not cover the period for which plaintiffs complained of their valuation.

A. When we considered that it was an innocent omission and not done for the purpose of evading taxes, we fixed it at 60 per cent. Occasionally when we considered that there had been a direct attempt to evade the returning what should have been returned, we put on, under the law authorizing it, 50 per cent. penalty. We put on the penalty and made the valuation about 90 per cent.

Q. 20. That is, in such cases of fraudulent withholding of property, your valuation as I understand was 60 per cent., with a penalty of 50 per cent. added?

A. Yes. I don't know as our records positively show that. That was the basis on which we fixed it.

95 Q. 21. You may state what was your practice.

A. I think that was our rule, where we considered that there had been a recognized attempt to evade paying taxes.

Q. 22. Have you, since you left the board, had any practice before the auditor or the tax inquisitor, in which cases they listed property of clients of yours?

A. Yes.

Q. 23. At what percentage of the actual value were they listed where the auditor was satisfied that the omissions of return were innocent?

Same objection by defendant.

A. In no case have either the auditor or tax inquisitors, or the board fixed it to exceed 60 per cent. where they were satisfied it was an innocent omission, to my recollection.

Q. 24. So far as your knowledge goes, at what percentage of valuation have securities above mentioned been actually returned by the owners thereof to the assessors?

Same objection by defendant.

A. We have customarily followed the 60 per cent. rule. Of course, some have returned less than that, which was discovered on investigation. But most of them returning have been aware of this general rule, and returned on that basis.

Q. 25. During your membership of the board to what extent did your inquiries extend into the valuation of real estate in the county of Cuyahoga?

To which question defendant objected as irrelevant and incompetent.

A. Quite extensively.

Q. 26. And into tangible personal property?

Same objection by defendant.

A. We had quite a great deal to do with each of them.

Q. 27. At what percentage of actual value have additions to real estate been made or were they made during the years of your membership of the board?

Same objection by defendant.

A. On the basis of about 50 per cent. of the asking price of the actual cash value, which we considered in the neighborhood of about the basis of 60 per cent. of the real cash value. For a time we figured 45 per cent. of the asking price, but during my connection with the board we were satisfied we made that a little low, and we changed to 50 per cent. of the asking price.

To which answer defendant objected as not being the best evidence.

96 Q. 28. At what percentage of its actual valuation was tangible personal property assessed?

Same objection by defendant.

A. Our board had a rule on stocks and merchandise and manufacturer's stocks, of taking about 40 per cent. of the invoice price. That was done on the basis of considering it about equal to 60 per cent. of the cash value in case the entire stock had to be turned into money.

Q. 29. What knowledge had you of the amount of credits in the county which were never in fact returned for taxation?

A. I am under the impression that there is a very large quantity of them from the experience I had in connection with that board and on it, for various causes.

To which answer defendant objected.

Q. 30. Give some of those causes.

A. From the fact that a great many credits are held by women and members of the family other than the head of the family; from the fact that our board is supposed to have jurisdiction only in the city, while a great many holders of credits live outside of the city. Bank deposits, for instance, were held by minors and by persons who otherwise perhaps would not be subject to taxation. So that, considering the total amount of credits as a whole in the way of bank deposits or mortgages, there was quite a small percentage actually listed.

Same objection by defendant.

Q. 31. Is it or is it not true that owners of credits who returned the same for taxation, disclose by their return the amount of debts

taken from their credits? Or, do they merely return the excess of credits over the debts?

Same objection by defendant.

A. The excess of credits is the more customary way, although the board with which I was connected endeavored to make people make their return show the actual amount of credits and debts and the difference; and that has been done to some extent. The former method is the more ordinary. If you take the great bulk of returns as they are made to the auditor, they would not disclose the actual amount of debts or property, but the simple percentage of the total number.

Cross-examination of THEODORE M. BATES.

By Mr. MONNETT:

Q. 32. You are referring to yourself as a member of the board of equalization known as the Cleveland board in the statutes under an act passed and reported in 89 O. L., page 283?

97 A. Yes.

Q. 33. You say you acted under powers that were vested in you by virtue of the act referred to, from May 1892, to May, 1896?

A. Yes.

Q. 34. And then after that period you appeared before this board as attorney for various corporations and individuals for the purpose of having their tax values reduced, as returned by the assessors and the county auditor?

A. Not necessarily. Very often the board would issue notice to persons and corporations to appear before them to explain in regard to their tax returns, and I went with them as attorney attending to their interests, whatever that was, which would result perhaps in their terms being accepted by the board, and perhaps in an increase. I also did appear for the purpose of getting—not customarily—their personal property reduced, and occasionally personally property in the way of what had been considered illegal items that had been returned.

Q. 35. You still act in that capacity?

A. Yes.

Q. 36. Have you been attorney for any of these plaintiff banks in having their taxes reduced?

A. I think not. I have represented no banks at all.

Q. 37. Any of the stockholders that are represented in these banks?

A. I don't know who the parties to this proceeding are, except the Mercantile national bank. I don't know anything of the nature of this proceeding. If there is a large number of banks, perhaps I knew a little of the proceedings at the time they were begun. I think I did represent the Merchants' Banking and Storage Company in one matter. I am quite sure, perhaps I have given advice to a number of others, but I presume not on matters of this kind. The

Garfield Savings and Banking Company for instance, but I think no national banks.

Q. 38. In the capacity of attorney since you have been off the board, have you appeared to raise or lower valuations?

A. I customarily have attended to the interest of the persons who employed me. When I was a member of the board I was working for the city endeavoring to see that taxes were brought in all that could be, and worked faithfully to that end in conformity with the law.

Q. 39. And since then you have been employed by persons who wanted their tax valuations reduced?

A. Yes.

Q. 40. That is your present capacity?

98 A. Yes. Parties come to me and think that their taxes are too high. I act for them in that capacity, first investigating myself as to my own information. I have had a great many people come who thought they were taxed too high, and I investigated the matter and advised them that they better be satisfied. Others I have told they had good points in their favor, and got reductions.

Q. 41. You appeal for parties now to have their taxes reduced?

A. Yes, as their attorney. They come to me in that capacity.

Q. 42. By reason of your connection with this board for four years, it has given you an education specially in that line?

A. Somewhat.

Q. 43. And by reason of the information you gained while a member of this board, you are enabled to give advice on these matters that perhaps a man not having given it the same study, could not give?

A. Naturally I acquired some familiarity with it that would be of benefit to people in my capacity as their attorney.

Q. 44. While you were a member of this board you appointed assessors, did you not?

A. Yes.

Q. 45. Do you mean to say you gave the assessors instructions under oath to appraise property at 60 per cent. of its true value, such as you have narrated to the court?

A. I think we did as far as this class of property was concerned.

Q. 46. Would you say you gave the assessors authority and instructions, and requested them to return investments in bonds, stocks in joint stock and otherwise at 60 per cent. of their usual selling price in cash?

A. Our instructions were not in that shape. Where we were satisfied that parties had returned 60 per cent. of the actual value, we did not interfere, or insist upon larger returns. I think that was practically their instructions.

Q. 47. Will you tell the court where you got the authority to give such instructions?

A. We followed the case of the Mercantile national bank against Whitbeck, treasurer, where the Supreme Court laid down the law on the subject. I think Judge Boynton had the case some ten years ago or so, in which the supreme court held that the fixing of 60 per

cent. upon bank stock, if other money capital and real estate was actually listed on that basis.

99 Q 48. The Whitbeck case says if the taxing officers had put in the personal property of the State or city at 60 per cent., they could not exceed that for the purpose of taxing banks? But you hadn't anything to do with bank stocks. You are now talking about something you had no commission for. Do you claim you had to fix one single national bank in the city of Cleveland?

A. We had such banks as the Society for Savings.

Q. 49. How did the Whitbeck case give you any authority?

A. We considered that our sacred trust and duty, to equalize.

Q. 50. Your oath was to obey the laws of the State of Ohio?

A. We considered that the interpretation of this case by the Supreme Court was part of our duty.

Q. 51. Which case?

A. The Whitbeck case.

Q. 52. The Whitbeck case says if the taxing officers of the taxing district had put State property at a given per cent., then the court would protect the national banks in that per cent. Was you fixing up this case for them by fixing State and city valuation at 60 per cent.?

A. We discovered when we were first appointed on that board that our predecessors had been acting upon the 60 per cent. basis; that bank stocks in the city as far as our knowledge went was actually fixed at 60 per cent. We had half a dozen banks which it was our duty to fix, among them the Citizens' Savings and Loan Company, which, conforming to that rule, we brought up from $300,000 to a million dollars tax valuation in one year; and we considered that in the equalization of taxes to make other stocks and bonds and mortgages and investments on a par with national bank stock over which we had no control, that fixing it on a 60 per cent. basis was proper and in accordance with our oaths and duties.

Q. 53. The national banks go into the United States court in the Whitbeck case, and they fix the valuation of 60 per cent. because that's the valuation fixed by the local taxing authorities of State property?

A. I judge so.

Q. 54. Now you turn around and you reverse that proposition?

A. No, we merely continued it.

Q. 55. You say you have found that the Supreme Court of the United States said that they should not pay higher than 60 per cent., and you adopted that as a standard for State property?

100 A. We felt this way: That the stand of the Supreme Court in holding that that 60 per cent. valuation on bank stocks was legal and proper if the local authorities had fixed 60 per cent. on the other, practically confirmed the right of the local authorities to fix 60 per cent., and we were merely following the precedent laid down.

Q. 56. You discovered that your predecessors had fixed 60 per cent.?

A. Yes.

Q. 57. You didn't discover your oaths and your laws requiring you to return at 100 per cent.?

A. We considered that the proper interpretation of——

Q. 58. But inasmuch as the supreme court had inferentially justified lawlessness, you said you would follow it out?

A. We considered that the proper interpretation of the true intent and meaning of the law.

Q. 59. If the Ohio statute required you—section 2749—to list bonds, stocks and investments in joint stock companies for taxation at the value ascertained by the usual selling prices thereof for cash at voluntary sales at the time and place of listing; and that if your predecessors who had violated that rule and ignored selling prices and fixed it at 60 per cent. of the selling price and established an illegal custom, you thought you had a right to follow that because the Supreme Court of the United States said United States banks should not exceed what — had illegally thus fixed. Was that your argument?

A. I do not like to say "yes" to that because it is not all I agree to. I would say that, considering the law, even the strictness of the statute you are reading, and considering the well-known and universal custom throughout the State of Ohio in regard to it and this decision, we consider our duty was plain in the matter, living up to our oaths, and I haven't the slightest conscientious scruple, and do not think it interfered with the true intent and meaning of the law of the State of Ohio, taken as a whole.

Q. 60. You claim that, notwithstanding the language of the constitution, which provides that laws should be passed fixing all moneys, credits and investments in bonds and joint stock companies and otherwise, and also of the rule that personal property should be listed according to its true value of money, that the statute based upon that constitutional provision which I have just quoted can be evaded because it has been done so in the past. Is that the theory you went on?

A. We had no responsibility for the passage of laws whatever.

101 Q. 61. What do you mean by that?

A. Your constitution says that laws may be passed so and so.

Q. 62. Weren't they passed in section 2739 that I have read to you?

A. We went by the general statute—first by the law in volume 81 page 283, and then the law applying to general boards of equalization.

Q. 63. You were organized under that, and took your oath as the statute says?

A. Yes.

Q. 64. To enforce the constitutional provisions set forth in plaintiff's petition which I have just read to you?

A. It seems as if the constitution did not have much to do with

that board. We followed the statute. The supreme court said the whole thing was in conflict with the constitution. We tried to follow the statute to the best of our knowledge.

Q. 65. You mean the supreme court treated you as outlaws because you did not follow the constitution?

A. We didn't consider we were placed there for the purpose of bothering with constitutional questions.

Q. 66. You started out to explain to the court that you had a right because your predecessors had not followed sections 2739 and 2749, laying down the rule for listing property, that you could proceed to ignore those sections and fix the value at 60 per cent.

To which question Judge Boynton on behalf of plaintiff objected on the ground that it is wholly irrelevant as to what reasons witness may have had for listing property at 60 per cent. of its cash value, the question to be decided being whether or not 60 per cent. was in fact adopted as a basis?

A. No, sir, we considered that we were following those sections according to our interpretation of the true intent and meaning of them, in connection with our duties as an equalizing board of real and personal property.

Q. 67. Was it because of the Whitbeck case, or because of your construction of these statutes that you fixed them at 60 per cent.?

A. Both.

Q. 68. In what way did you interpret sections 2739 and 2749, that gives you that construction?

A. I think I have pretty fully stated that what we considered had come to be quite a universal custom throughout the State to the best of our knowledge, and we considered that custom had been strengthened by this Whitbeck case, and that our oaths were
102 not only to assess that property at its true value of money, but we were sworn to equalize values of personal property, and add to those that in our opinion were assessed lower according to the average valuation—if you notice the law—and to raise those that were assessed too low, taking into consideration the average, and lower those that were assessed too high. That was part of our oath, as well as the other.

Q. 69. You chose to ignore that part which lay stress on the value, and laid great stress on equalization. I wish you would explain to the court what you mean when you say that you found the actual cash value and then aimed to fix 60 per cent. of that, when you are required in sections 2739 and 2749 to bring all property up to its actual true value thereof in money?

A. I think that is just what I have been endeavoring to explain.

Q. 70. You have explained the reason you made them 60 per cent. was because some were below and some were above. How does it come you reduced them to 60, or permitted them to remain at 60 per cent.?

A. Because it was our sworn duty to equalize.

Q. 71. It was also your sworn duty to return them at the cash

value. Why was one part of the oath so binding and the other of no effect? Why did you equalize at all?

A. We had an idea that's what we were there for.

Q. 72. When did you lose the idea that you were there to put the true value of money on it?

A. I explained that.

Q. 73. Isn't it a fact that it is just as you said; you simply followed the old board's rulings or the old board's findings, and never attempted to raise them to the true value of money?

A. We never attempted to fix the valuation of bonds, stocks, or credits at their real face value, the actual selling value in money. We had adopted this policy of 60 per cent., and it resulted in the addition to the duplicate of from three million dollars to five millions dollars every year, and in addition to what our predecessors had had every year when I was a member of the board—three million dollars to five million dollars in three different years. The honest carrying out of the laws on equalization resulted in that. If we had attempted to make it 100 per cent., it would have been impossible, and it would have resulted in less being added to the duplicate than the theory on which we proceeded.

Q. 74. You told the court that under section 2783 if a man concealed, or refused to obey the law in reporting for taxation, you put a penalty of 50 per cent. on?

103 A. I don't know if I said we didn't have the power, I to conceal his property.

Q. 79. Do you know anything about the rules outside you could not enforce that?

A. The intention of the law was plainly, that in such cases there should be a penalty added for that violation.

Q. 76. You enforced that. If you had the power to enforce that, what makes you assume you hadn't any power to carry out the statute in the other respects?

A. I don't know if I said we didn't have the power, I don't know that I did—I stated I didn't think we could practically equalize personal property and place stocks and bonds at 100 per cent. on the dollar, when we knew we could not assess the stocks of merchants and manufacturers at anything like 100 cents on the dollar and actually get them paid and returned, and bring the duplicate up to the enormous amount that that would have brought it to. We believed that if we attempted it on one class of property and not on the other, we would work an injustice to the tax-payers of Cleveland.

Q. 77. Why didn't you leave it at 40 per cent.? It would have been much easier.

A. It would have resulted in a falling off of the duplicate, and our principle was to increase.

Q. 78. Why did you stop at 60 per cent. if your theory was right?

A. Our object was to equalize. I have stated we had a precedent for fixing at 60 per cent. and where we got that precedent.

Q. 79. Do you know anything about the rules outside of Cuyahoga county?

A. Not from practical connection with them, but from hearing. When a member of the board we visited Cincinnati and had talks with the members of the Cincinnati board two or three times. When our board was first organized we took a trip to Cincinnati in 1892, and we got the impression from that trip that that was the basis they were working on down there. I remember one member of the board said to our board that they considered the rules was to assess about 58 per cent. of its actual value in Cincinnati, and that they were fixing the valuation of personal property at about 60 per cent.

Q. 80. So what you have narrated of your information from other parts of the State is what you gathered from hearsay and unofficial statements of other members of the board?

A. Yes, and also some talk with members of the decennial State board of equalization in 1890.

104 Q. 81. All this transpired prior to the valuation of 1897 of these banks?

A. Yes.

Q. 82. None of this was since then?

A. No.

Q. 83. You don't know what the rule was in 1897 from information of this board or the other?

A. I am very sure I should have been aware if there had been any change in the rule.

Q. 84. You have not been in Cincinnati since these suits were begun on this business, or for a year prior to this suit—say during 1896?

A. I think we were there in the winter before I left the board. I believe it was in the winter of 1896.

Q. 85. That's another reason why you say you ignored the cash values, because somebody else had done that?

A. That's one reason. There were a great many reasons, I could not give them all. The action of the State board of equalization in 1890, as stated throughout the newspapers and through conversations with individual members of the board led me to believe that 60 per cent. was not above the average value of real estate.

Q. 86. Will you name any individual cases, where money in bank or stocks or bonds in this city, are only assessed at 60 per cent.?

A. I don't know as I have any personal knowledge. While I was a member of the board I could cite any number of cases.

Q. 87. Can you cite any during 1897? Any individual citizens that are only returning their stocks and bonds and moneys at 60 cents on the dollar? I wish you would give us a few.

A. From looking over the tax returns I am very sure I could. From memory I don't know as I can. If I should state it from memory it would be doing persons an injustice probably in not looking at the returns carefully. I am very sure a large number are doing so.

—. Do you advise clients and protect them in returning at 60 per cent., believing that is the law?

A. I advise them to make a return of that class of property at 60 per cent., and tell them that in accordance with the ordinary rules

of the board it will be accepted, and they will not be asked to pay more.

Q. 88. Name some of those that are returning that way.

A. I don't know that it would be proper for me to make out a list of my clients.

105 Q. 89. Your alleged city board didn't have anything to do with the Cuyahoga property outside of the city, did it?

A. No, sir.

Q. 90. Did you get any instructions from the county auditor at any time to return moneys at 60 per cent. of their value, or did you take any instructions from the auditor?

A. No, sir, we got no instructions of that kind.

Q. 91. Did you instruct the auditor?

A. No, we worked together. We often had talks on that line, and the auditor told us to be very careful about our 60 per cent. rule, and not put in on record.

Q. 92. You never found that officially?

A. I think we were rather careful.

Q. 93. You were very careful not to make an official record of this 60 per cent.?

A. There is nothing in our minutes in regard to that.

Q. 94. What was the purpose of that?

Q. 95. What was the purpose of that?

A. In the first place there wasn't any necessity for doing so.

Q. 96. If you should produce your records instead of testifying from memory, they would not show a 60 per cent. basis?

A. I don't think it would show that the board actually fixed such an amount as 60 per cent.

Q. 97. What did you use?

A. We said we fixed the value of such property at so much. We would take mining stock, for instance, and get their list value of stock marketed such a date, and fix the value at 60 per cent. of the cash value. We did not show that they were listed at 100 cents and fixed at 60.

Q. 98. Then that could not be told from your records at all?

A. No.

Q. 99. The first that your clients got the information was when you appeared before them afterwards and disclosed that?

A. That was no secret. It was common report and common knowledge. But we did not think it necessary to say so in our minutes.

Q. 100. Wasn't it because you didn't want to publicly violate the statute, and does not your record show?

A. Our record would show we fixed valuation at so much without saying whether that was in our opinion the true value of money, nor that it was in our opinion the proper tax value for the property. We didn't state that it was the true value or 0 or 50 per cent. of the true value.

106 Q. 101. Can you give the language of your entries on the question of fixing values?

A. Upon the proof presented before the board it fixes the valuation of such stock at so much; and that was carried on the 60 per cent. basis.

Q. 102. Did you make any findings to that effect?

A. Certainly not.

Q. 103. The auditor objected to your finding that at 60 per cent.?

A. I recollect some conversation with Mr. Akins, in which he thought it wasn't wise to have that shown. We never cared anything about that particular. Mr. Morgenthaler was always kicking on it and thought we ought not to use 60 per cent. basis.

Q. 104. The word "value" you used there then was one thing on the face and another thing secretly?

A. We generally used the term "taxable value."

Q. 105. And the statute defines taxable value as cash value, so that your records make you a law-abiding board.

A. (Witness made no audible answer.)

Redirect examination of THEODORE M. BATES.

By Judge BOYNTON:

Q. 106. The statute requires boards of equalization to equalize values?

A. Yes.

Q. 107. Equality and uniformity are provided also by the statute for taxation?

A. Yes.

Q. 108. How could you equalize values on the basis of actual value if other property throughout the State was listed far below its actual value? In other words, if you assessed personal property at its actual value, would there have been any equality or uniformity between that assessment and other assessments of similar property throughout the State?

A. I think not.

Recross-examination of THEODORE M. BATES.

By Mr. MONNETT:

Q. 109. Was it your business to equalize between Cuyahoga and the city of Cleveland, and other parts of the State?

A. No, sir, we did not consider it our duty to raise Cuyahoga county above—to raise the total valuation either of real estate or personal property so as to make the total valuation largely in excess of its proportion as fixed by the State decennial board.

Q. 110. You undertook to find out so as to bring yourself
107 up equal to the other boards of the State in values? Did you undertake to equalize your values beyond other boards of the State, or didn't you, or just between the different property-holders of the city?

A. We understood that Cuyahoga county and the city of Cleveland as a whole had been equalized by the State board of equaliza-

tion in real estate. We did not consider it our duty in actions upon real estate to raise the total valuation of the real estate, only to equalize it within the city of Cleveland and keep above the mark as required by law, that our total abatements should not exceed the additions.

Q. 111. You equalized between different wards in this city?

A. Yes.

Q. 112. You did not pretend to be acting as a State decennial board?

A. No, sir, but the total value of the real estate in the city of Cleveland having been fixed by the decennial board, and having been in our idea not to exceed 60 per cent. of its actual value, and our board having according to the statute jurisdiction over personal property and real estate, in equalizing and fixing the values of personal property on a par equal with real estate, we did not think we should bring the personal property up to 100 cents on the dollar, while the real estate was 60 per cent. We did not think that would be just to the tax-payers of the city of Cleveland in proportion to the other tax-payers of the State.

Q. 113. There is real estate in the city of Cleveland that is 100 cents on the dollar, and some about 40 cents on the dollar. Which did you take as a standard?

A. There wasn't any left that way when the supreme court knocked this board out. There wasn't any that way when I went off the board. We have reduced some on the West Side that previous to our action stood at 100 cents. There wasn't any left that way when I went off the board.

Q. 114. Don't you know, as a matter of fact and as a taxing officer, that the city of Cleveland and county of Cuyahoga is less than the other part of the State?

A. No, sir.

Q. 115. Is it, or is it not?

A. I don't think it varies very much from the rest of the State, so far as my knowledge and information is concerned. There are parties, I believe, right here on this very case, when this board was knocked out, the second ward in the city of Cleveland, I be-
108 lieve, is assessed way below what it should be, and I believe was at that time. I was a member of the board when they had the first 10 per cent.

Q. 116. And on the West Side property it is 100 cents on the dollar?

A. Yes, over in the vicinity where Mr. Cook lives there is property that the original assessment as levied upon, if our board had not interfered, it would be very nearly 100 cents on the dollar.

Q. 117. You could not bring the other property up to that?

A. No, sir, it would have been absolutely impossible. We would have been enjoined the next day, just as we were enjoined when we tried to bring up the second ward.

Q. 118. And because some of the property was below and some above, you struck a medium of 60 per cent.?

A. Yes, we spent a good deal of time endeavoring to discover

what the average was and bring that that was high down, and raise that which was low.

Q. 119. You didn't have any regard to what your duties *was* under the statute, except as to equalization?

A We considered that the total valuation of stocks had been practically fixed.

Q. 120. You are decreasing real estate?

A. Yes, and as a total we ought not to change it, and our duties in real estate were practically to equalize between each other, and it wasn't part of our duty to put personal property at 100 per cent. when we were forced to leave real estate at 60 per cent.

By Judge BOYNTON:

Q. 121. How did it happen property on the West Side was on the duplicate at 100 cents on the dollar of its valuation? Did it result from the fact of depreciation of property?

A. Yes, and partly from the fact that its original assessment was too high. Both causes worked together.

AUGUST 16TH, 1898—1.30 p. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: W. W. Boynton, counsel; N. T. Horr and E. S. Cook, solicitors for complainants; Frank S. Monnett, attorney general; Smith W. Bennett, assistant attorney general; P. H. Kaiser, solicitor for Cuyahoga county, Ohio, for respondents.

It is admitted by counsel on both sides that the book from
109 which the following data are taken is the "auditor of State's report" for 1897, made to the governor by W. D. Guilbert, auditor of State, December 24th, 1897.

Plaintiff offers from said book, on page 212, the first group of items entitled, "The value of all taxable real estate and personal property in Ohio, according to the consolidated tax duplicate of 1897." To which defendant objected. Objection noted.

Counsel reads from said book, page 212, as follows:

"The value of all taxable real estate and personal property in Ohio, according to the consolidated tax duplicate of 1897, is as follows:

Real estate in cities and villages.....	$65,313,462 00
Real estate not in cities and villages	591,598,409 00
Chattel property.....	511,096,768 00
Total taxable values in 1897	$1,748,008,639 00

Thereupon plaintiff offered in evidence from said book page 230 the following totals:

Same objection by defendant.

"TABLE VI.

Abstract of the Personal Property, Moneys, and Credits as Returned by the Township Assessors and Equalized by the County and City Boards for the Year 1897.

Horses.	Cattle.	Mules.
$25,545,542	$19,975,887	$475,343
Sheep.	**Hogs.**	**Carriages.**
$4,504,496	$5,560,358	$4,505,000

All other personal property subject to taxation and not included in any of the foregoing or subsequent items of this statement, $32,817,212.

Watches.	Pianos and organs.	Merchants' stock.
$1,477,275	$4,727,314	$37,518,495

Value required to be listed as banker, broker or stock jobber, $482,023.

Manufacturers' stock, etc., $14,429,878.

Value of all moneys in possession or on deposit subject to order, $33,512,701.

Value of all credits after deducting all *bona fide* debts, $99,227,416.

All moneys invested in bonds, stocks, joint stock compa-
110 nies, annuities or otherwise, $7,611,124.

Dogs, value fixed by owner, $42,807.

Bank, railroad and other corporation property returned to county auditor, $204,519,999.

Total value of all taxable property except *per capita* tax on dogs, $496,932,869."

Plaintiff further introduced in evidence from the same book the following extract from Table No. XI, page 308, statement of valuation of property of the various railroad companies in the State of Ohio as fixed by the local boards for the year 1897, with additions and deductions, and total values as fixed by the State board of equalization for such property in accordance with provisions of sections 2770 to 2776, Revised Statutes. Table IX, page 310, action of State board, totals, $105,101,916.

Also from Table XI, page 326, the following extract:

Statement of the Valuation of National Banks, as Returned to and Fixed by the State Board of Equalization of Bank Shares for 1897.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditors, exclusive of real estate.	Action of State board.		
								Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
Delphos	Delphos	Allen	$60,000	$36,000	$165	$96,165	$60,080	$60,080	$4,030	$64,110
First	Lima	"	100,000	.....	3,862	103,862	63,332	63,332	.....	63,332
Ohio	"	"	120,000	9,000	15,046	144,046	93,386	93,386	.....	93,386
First	Ashland	Ashland	50,000	20,000	2,505	72,505	34,700	34,700	11,250	45,950
Farmers'	Ashtabula	Ashtabula	150,000	30,000	86,074	266,074	249,080	156,080	16,994	173,074
Marine	"	"	50,000	10,000	3,875	63,875	59,365	37,365	4,510	41,875
First	Conneaut	"	50,000	200	2,150	52,350	47,541	29,541	4,808	34,349
"	Geneva	"	100,000	16,500	1,967	118,467	110,007	66,507	8,460	74,967
"	Jefferson	"	70,000	14,000	21,873	105,873	94,873	57,873	11,000	68,873
"	Athens	Athens	50,000	10,000	2,709	62,709	29,000	34,700	6,000	40,700
"	St. Mary	Auglaize	60,000	12,000	980	72,980	42,990	42,990	3,405	46,395
"	Wapakoneta	"	100,000	20,000	5,358	125,358	79,340	79,340	1,490	80,830
People's	"	"	100,000	20,000	9,819	129,819	70,580	70,580	13,150	83,730
First	Barnesville	Belmont	100,000	32,000	1,010	133,010	93,880	79,880	7,460	87,340
People's	"	"	100,000	20,000	437	120,437	76,640	76,640	1,920	78,560
First	Bellaire	"	200,000	27,057	.....	227,057	135,440	135,440	12,150	147,590
First	Belmont	"	50,000	4,500	47	54,547	32,675	32,675	2,780	35,455
First	Bridgeport	Belmont	200,000	435	654	201,089	125,760	125,760	4,950	130,710
"	Flushing	"	50,000	1,000	712	51,712	32,040	24,220	1,580	25,800
First	St. Clairsville	Belmont	100,000	40,000	883	140,883	88,732	88,732	4,250	92,982

Table XI—Continued.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditors, exclusive of real estate.	Action of State board.		
								Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
Second	St. Clairsville	Belmont	$50,000	$2,500	$3,127	$55,627	$33,375	$33,375	....	$33,375
First	Georgetown	Brown	50,000	10,000	145	60,145	43,500	34,700	$4,495	39,195
Citizens'	Ripley	"	100,000	4,500	3,515	108,015	82,300	66,300	4,230	70,530
Ripley	"	"	100,000	80,000	1,098	181,098	140,950	112,950	5,210	118,160
First	Hamilton	Butler	100,000	85,000	1,827	186,827	117,180	121,180	.....	121,180
Miami Valley	"	"	100,000	20,000	5,499	125,499	73,570	79,070	.....	79,070
Second	"	"	100,000	50,000	2,787	152,787	83,930	88,930	10,180	99,110
First	Middletown	"	150,000	50,000	17,050	217,050	132,830	132,830	5,400	138,230
Merchants'	"	"	200,000	100,000	112,888	412,888	211,330	211,330	50,550	261,880
First	Oxford	"	50,000	6,500	923	57,423	34,720	36,720	....	36,720
First	St. Paris	Champaign	52,100	10,500	15,979	78,579	50,537	50,537	2,760	53,297
Champaign	Urbana	" ..	100,000	20,000	10,624	130,624	85,000	85,000	5,420	90,420
Citizens'	"	" ..	100,000	60,000	27,170	187,170	109,000	109,000	13,760	122,760
National	"	" ..	100,000	7,000	6,159	113,159	64,000	64,000	8,570	72,570
First	Springfield	Clark	400,000	135,000	5,328	540,338	351,211	351,211	.....	351,211
Lagonda	"	"	100,000	43,000	15,245	158,245	88,618	88,618	14,240	102,858
Mad River	"	"	300,000	60,000	21,633	381,633	234,760	234,760	11,180	245,940
113 Second	Springfield	Clark	200,000	120,000	2,381	322,381	195,907	195,907	13,240	209,147
Springfield	"	"	100,000	20,000	2,533	122,533	72,974	72,974	6,320	79,294
First	Batavia	Clermont	80,000	16,000	3,108	99,108	56,540	60,040	3,875	63,915
First	Felicity	"	50,000	8,100	1,230	59,330	35,598	38,098	.....	38,098
Milford	Milford	"	50,000	4,600	5,727	60,327	36,196	37,696	.....	37,696

First	New Richm'nd.	"	80,000	20,000	3,135	103,135	59,181	61,681	4,500	66,181
Clinton Co.	Wilmington	Clinton	100,000	90,000	6,652	196,652	109,070	114,570	10,930	125,500
First	"	"	100,000	20,000	5,729	125,729	70,300	71,800	9,700	81,500
First	E. Liverpool	Columbiana	100,000	40,000	13,252	153,252	85,201	85,201	6,750	91,951
Potters	"	"	100,000	20,000	4,583	124,583	72,049	72,049	2,700	74,749
First	Leetonia	"	100,000	14,000	5,471	119,471	71,682	71,682	.....	71,682
First	Lisbon	"	50,000	1,018	2,012	53,030	28,977	28,977	2,840	31,817
Farmers'	Salem	"	200,000	40,000	8,416	248,416	143,959	143,959	5,090	149,049
First	"	"	100,000	20,000	13,001	133,001	79,800	79,800	.....	79,800
First	Wellsville	"	50,000	44,430	557	94,987	46,272	46,272	10,720	56,992
First	Bucyrus	Crawford	100,000	20,000	1,578	121,578	78,000	74,000	6,810	80,810
Second	"	"	60,000	483	.....	60,483	38,000	38,000	4,140	42,140
Citizens'	Galion	"	60,000	.....	2,398	62,398	39,000	39,000	4,280	43,280
First	"	"	50,000	.....	13,011	63,011	34,000	34,000	10,250	44,250
Galion	"	"	60,000	.....	2,511	62,511	38,000	38,000	5,840	43,840
Central	Cleveland	Cuyahoga	800,000	.....	16,643	816,643	483,660	583,660	.....	583,660
Cleveland	"	"	500,000	.....	.....	500,000	273,600	338,600	44,011	382,611
Commercial	Cleveland	"	1,500,000	66,024	.....	1,566,024	926,790	1,166,790	21,350	1,188,140
Euclid Ave.	"	"	500,000	5,000	.....	505,000	282,450	337,450	34,240	371,690
First	"	"	500,000	5,517	.....	505,517	279,900	334,900	36,000	370,906
Mercantile	"	"	1,000,000	.....	174,541	1,174,541	519,320	642,320	117,370	759,690
Nat'l Commerce	"	"	1,500,000	.....	32,735	1,532,735	879,130	1,057,130	67,490	1,124,620
" City	"	"	250,000	150,000	19,869	419,869	250,460	327,460	2,370	329,830
Park	"	"	500,000	.....	9,326	509,326	299,400	309,400	.....	309,400
State	"	"	500,000	.....	27,056	527,056	289,800	349,800	11,000	360,800
Union	"	"	1,000,000	.....	46,044	1,046,044	627,600	744,600	.....	744,600
Western Reserve	"	"	1,000,000	.....	1,879	1,001,879	590,280	664,280	.....	664,280
First	Arcanum	Darke	50,000	2,067	2,944	55,011	38,500	38,500	.....	38,500
Farmers'	Greenville	"	84,000	50,000	7,720	141,720	86,800	86,800	7,040	93,840
Second	"	"	100,000	25,000	7,136	132,136	91,500	91,500	.....	91,500
First	Defiance	Defiance	175,000	90,000	10,296	275,296	151,226	156,626	7,900	164,526
114 Merchants'	Defiance	Defiance	100,000	1,000	3,669	104,669	60,027	60,027	1,860	61,887
First	Hicksville	"	50,000	4,721	2,599	57,320	32,695	32,695	1,090	33,785
Delaware Co.	Delaware	Delaware	100,000	200	2,225	102,425	72,410	72,410	4,590	77,000
First	"	"	100,000	20,000	1,719	121,719	81,030	75,000	9,970	84,970
"	Huron	Erie	50,000	1,810	3,049	54,859	32,915	32,915	.....	32,915
Citizens'	Sandusky	"	100,000	25,000	6,000	131,000	76,962	76,962	2,730	79,692
Moss	"	"	150,000	15,000	1,472	166,472	95,029	95,029	8,070	103,099
Second	"	"	100,000	40,000	595	140,595	78,176	78,176	10,300	88,476

Table XI—Continued.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditors, exclusive of real estate.	Action of State board.		
								Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
Third Exchange	Sandusky	Erie	$200,000	$50,000	$372	$250,372	$148,804	$148,804	$2,365	$151,169
Hocking Valley	Lancaster	Fairfield	60,000	12,000	3,366	75,366	45,970	45,970	4,730	50,700
Midland	Wash'g'n C. H.	Fayette	50,000	3,000	5,004	58,004	33,670	33,670	1,330	35,000
Deshler	Columbus	Franklin	300,000	100,000	22,778	422,778	274,800	274,800	.....	274,800
Fourth	"	"	100,000	18,500	27,500	146,000	94,900	76,200	.....	76,200
Clinton	"	"	200,000	20,000	2,342	222,342	144,510	144,510	.....	144,510
Commercial	"	"	200,000	10,000	9,608	219,608	136,240	125,805	3,940	129,745
Hayden	"	"	200,000	40,000	91	240,091	156,060	156,060	.....	156,060
Merchants' & Mfgs'	"	"	350,000	15,000	12,278	377,278	219,770	219,770	.....	219,770
"The"	"	"	300,000	30,000	35,812	365,812	219,400	124,400	11,600	136,000
Centerville	Thurman	Gallia	50,000	10,000	3,321	63,321	30,000	30,000	.....	30,000
First	Gallipolis	"	50,000	10,000	904	60,904	32,500	32,500	6,600	39,100
115 First	Chardon	Geauga	50,000	5,000	3,778	58,778	33,460	33,460	2,540	36,000
Citizens'	Xenia	Greene	100,000	40,000	15,317	155,317	95,500	95,500	4,500	100,000
Xenia	"	"	100,000	20,000	20,232	140,232	77,740	77,740	10,260	88,000
Quaker City	Quaker City	Guernsey	100,000	20,000	647	120,647	74,660	74,660	3,760	78,420
Old	Cambridge	"	100,000	20,000	4,031	124,031	78,550	78,550	2,070	80,620
Central	"	"	100,000	16,000	1,154	117,154	73,320	73,320	2,830	76,150
Guernsey	"	"	50,000	15,000	34	65,034	38,515	35,515	3,760	42,275
Atlas	Cincinnati	Hamilton	400,000	160,000	22,866	582,866	215,070	215,070	43,920	258,990
Citizens'	"	"	1,000,000	200,000	135,118	1,335,118	669,610	669,610	60,250	729,860
Equitable	"	"	350,000	100,000	17,671	467,671	289,230	289,230	2,820	292,050

Fifth	"	"	500,000		25,839	525,839	323,010	238,954	6,680	245,634
First	"	"	1,200,000	240,000	200,763	1,640,763	874,890	874,890	94,110	969,000
Fourth	"	"	500,000	400,000	40,833	940,833	576,690	576,690		576,690
German	"	"	500,000	300,000	73,200	873,200	482,190	482,190	9,990	492,180
La Fayette	"	"	600,000	400,000	159,133	1,159,133	641,130	641,130	23,640	664,770
Market	"	"	250,000	100,000	56,577	406,577	168,530	168,530	57,130	225,660
Merchants'	"	"	600,000	120,000	37,967	757,967	464,460	464,460	10,140	474,600
Ohio Valley	"	"	700,000	140,000	53,504	893,504	467,980	467,980		467,980
Second	"	"	200,000	200,000	8,125	408,125	206,520	206,520	25,370	231,890
Third	"	"	1,200,000	320,000	128,239	1,648,239	839,160	839,160	57,050	896,210
First	Lockland	"	50,000	2,500	656	53,156	32,220	32,220		32,220
American	Findlay	Hancock	100,000	5,600	929	106,529	53,647	53,647	10,270	63,917
Farmers'	"	"	115,000			115,000	58,885	58,885	20,515	74,400
First	"	"	150,000	8,500	9,587	168,087	56,112	56,112	44,740	100,852
"	Kenton	Hardin	50,000	49,500	309	99,809	59,885	59,885		59,885
Kenton	"	"	50,000	2,500	170	52,670	27,200	27,200	4,390	31,590
Farmers' & M'ch's'	Cadiz	Harrison	50,000	29,000	1,272	80,272	37,655	37,655	18,535	56,190
First	"	"	120,000	24,000		144,000	86,450	74,540	7,060	81,600
Fourth	Cadiz	Harrison	120,000	10,600	880	131,480	78,887	78,887		78,887
Harrison	"	"	100,000	110,000	1,290	211,290	137,833	120,313	10,090	130,403
Merchants'	Hillsboro	Highland	100,000	10,000	2,128	112,128	65,000	65,000		65,000
First	Monroeville	Huron	50,000	10,000	5,656	65,656	37,729	37,729	2,050	39,779
"	Norwalk	"	50,000	10,050	8,079	68,129	38,058	38,058	3,350	41,408
Norwalk	"	"	100,000	20,000	28,028	148,028	90,933	90,933		90,933
New London	New London	"	50,000	3,650	6,050	59,700	35,313	35,313	1,500	36,813
First	Plymouth	"	50,000	10,000	710	60,710	35,669	35,669	2,500	38,169
116 First	Jackson	Jackson	50,000	10,000	5,247	65,247	28,699	31,699	6,301	38,000
"	Wellston	"	50,000	6,000	1,881	57,881	24,507	24,507	10,493	35,000
First	Mt. Pleasant	Jefferson	175,000	35,000	1,109	211,109	136,600	136,600	600	137,200
"	Smithfield	"	100,000	17,300	9,712	127,012	72,250	72,250	10,310	82,560
Commercial	Steubenville	"	125,000	723	8,790	134,513	77,200	77,200	10,210	87,410
National Exchange	"	"	100,000	25,000	11,004	136,004	88,400	88,400		88,400
Steubenville	"	"	125,000	40,000	12,491	177,491	106,300	106,300	9,030	115,330
First	Mt. Vernon	Knox	50,000	15,000	2,193	67,193	30,487	30,487	16,381	46,868
Knox	"	"	50,000	6,800	3,314	60,114	36,069	36,069		36,069
Painesville	Painesville	Lake	200,000	16,600	9,648	226,248	127,000	127,000	8,850	135,850
Citizens'	Ironton	Lawrence	100,000	10,000	5,656	115,656	58,730	58,730	1,270	60,000
First	"	"	300,000	8,035	9,548	317,583	171,320	171,320	8,680	180,000
Second	"	"	250,000	30,600	3,838	284,438	122,340	122,340	27,660	150,000

Table XI—Continued.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditors, exclusive of real estate.	Action of State board.		
								Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
First	Newark	Licking	$100,000	.....	$8,175	$108,175	$61,815	$61,815	$8,500	$70,315
People's	Newark	Licking	150,000	$30,000	28,746	208,746	135,685	135,685	.....	135,685
Bellefontaine	Bellefontaine	Logan	100,000	21,500	4,066	125,566	73,690	73,690	9,180	82,870
People's	"	"	100,000	25,000	18,198	143,198	94,510	94,510	.....	94,510
"The"	Elyria	Lorain	150,000	35,000	3,559	188,559	106,096	106,096	7,010	113,106
Citizens'	Oberlin	"	60,000	15,000	2,391	77,391	46,423	46,423	.....	46,423
First	Wellington	"	100,000	5,000	124	105,124	56,799	56,799	6,270	63,069
117 First	Toledo	Lucas	500,000	600,000	137,114	1,237,114	714,710	714,710	27,490	742,200
Holcomb	"	"	300,000	75,000	10,028	385,028	230,920	230,920	.....	230,920
Ketchum	"	"	250,000	50,000	18,591	318,591	171,054	171,054	13,130	184,184
Merchants'	"	"	300,000	180,000	12,205	492,205	273,842	273,842	23,790	297,632
Northern	"	"	300,000	160,000	9,350	469,350	280,176	280,176	1,360	281,536
Second	"	"	350,000	650,000	50,397	1,050,397	623,840	623,840	6,380	630,220
Madison	London	Madison	120,000	24,000	1,248	145,248	92,110	92,110	3,890	96,000
Farmers'	Canfield	Mahoning	50,000	10,000	8,490	68,490	39,960	39,960	1,130	41,090
Commercial	Youngstown	"	200,000	34,000	.....	234,000	140,400	140,400	.....	140,000
Mahoning	"	"	229,000	.....	62,062	291,062	157,540	157,540	17,100	174,640
First	"	"	500,000	100,000	17,784	617,784	357,450	357,450	13,220	370,670
Second	"	"	200,000	110,947	31,960	342,907	183,800	183,800	21,940	205,740
Wick	"	"	300,000	.....	10,987	310,987	154,090	154,090	32,500	186,590
Middleport	Middleport	Meigs	50,000	3,100	1,257	54,357	31,050	31,050	1,565	32,615
Pomeroy	Pomeroy	"	50,000	3,000	3,679	56,679	30,950	30,950	5,154	36,104

Old Phœnix	Medina	Medina	75,000	6,000	3,717	84,717	50,000	50,000			50,000
Citizens'	Piqua	Miami	150,000	30,000	22,815	202,815	123,655	123,655	4,860		128,515
Piqua	"	"	200,000	40,000	43,391	283,391	181,609	181,609	5,910		187,519
Third	"	"	100,000	12,000	4,335	116,335	65,217	65,217	9,560		74,777
Tipp	Tipp City	"	60,000	12,000	7,763	79,763	52,661	52,661	1,560		54,221
First	Troy	"	200,000	40,000	12,410	252,410	168,208	168,208	3,150		171,358
Troy	"	"	100,000	20,000	8,813	128,813	85,134	85,134			85,134
First	Malta	Morgan	75,000	4,600	1,922	81,522	49,335	49,335	3,165		52,500
First	McCon'lsville	"	100,000	16,000	766	116,766	80,000	76,000			76,000
City	Dayton	Montgomery	200,000	60,000	39,136	299,136	202,994	202,994	6,743		209,737
Dayton	"	"	300,000	60,000	17,893	377,893	264,504	264,504			264,504
Fourth	"	"	600,000	120,000	11,848	731,848	512,293	512,293			512,293
Merchants'	"	"	300,000	60,000	5,974	365,974	255,681	255,681			255,681
Teutonia	"	"	200,000	28,000	5,897	233,897	163,713	163,713			163,713
Third	"	"	400,000	100,000	34,933	534,933	359,382	359,382	9,070		368,452
Winters'	"	"	500,000	132,000	6,015	638,015	441,349	441,349	5,340		446,689
First	Germantown	"	50,000	15,000	3,326	68,326	45,438	45,438	2,390		47,828
Citizens'	Miamisburg	Montgomery	100,000	20,000	53	120,053	84,037	84,037			84,037
First	"	"	100,000	50,000	25,548	175,548	122,882	122,882			122,882
"	Cardington	Morrow	60,000	20,000	187	80,187	41,975	41,975	6,025		48,000
First	Mt. Gilead	"	50,000	5,500	5,639	61,139	35,970	35,970	1,530		37,500
118 Morrow Co	Mt. Gilead	Morrow	50,090	10,000	1,465	61,465	35,250	35,250	2,250		37,500
Citizens'	Zanesville	Muskingum	200,000	50,000	24,909	274,909	147,147	149,147	15,020		164,167
First	"	"	200,000	110,000	41,911	351,911	197,171	197,171	14,730		211,901
Union	"	"	150,000	18,000	11,269	179,269	97,687	100,687	4,500		105,187
Noble Co	Caldwell	Noble	60,000	28,000	16,829	104,829	60,918	60,918	7,220		68,138
First	Circleville	Pickaway	139,000	60,000	1,873	191,873	99,400	99,400	15,700		115,100
Second	"	"	125,000	62,500	4,883	192,383	107,380	107,380	8,040		115,420
Third	"	"	100,000	16,000	1,320	117,320	70,000	70,000			70,000
First	Garrettsville	Portage	80,000	10,682	2,421	93,103	57,028	57,028	8,370		65,398
Kent	Kent	"	60,000	12,000	2,143	74,143	42,780	42,780	6,560		49,340
First	Ravenna	"	100,000	20,000	7,639	127,639	75,950	75,950	7,530		83,480
Second	"	"	150,000	25,600	12,006	187,606	116,871	116,871	6,170		123,041
Preble Co	Eaton	Preble	50,000	8,500	1,579	60,079	40,000	40,000			40,000
Citizens'	Mansfield	Richland	100,000	40,000	5,874	145,874	102,110	92,410			92,610
Farmers'	"	"	150,000	5,000	6,023	1 1,023	104,920	96,920	7,800		104,720
First	Shelby	"	50,000	20,000	1,245	71,245	45,700	43,700	4,170		47,870
Central	Chillicothe	Ross	100,000	50,000	7,058	157,058	101,650	101,650	770		102,420
First	"	"	150,000	130,000	6,903	286,903	181,556	181,556	4,930		186,486

Table XI—Continued.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditors, exclusive of real estate.	Action of State board.		
								Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
Ross county	Chillicothe	Ross	$150,000	.....	$72,227	$222,227	$143,148	$143,148	.....	$143,148
First	Bellevue	Sandusky	50,000	$10,000	11,689	71,689	43,010	43,010	.....	43,010
119 First	Clyde	Sandusky	50,000	3,650	506	54,156	31,120	31,120	$1,370	32,490
"	Fremont	"	100,000	21,000	489	121,489	57,990	57,990	14,900	72,890
First	Portsmouth	Scioto	100,000	18,500	12,250	130,750	58,610	63,610	10,260	73,870
Portsmouth	"	"	125,000	26,750	289	152,039	81,640	81,640	9,510	91,150
First	Fostoria	Seneca	50,000	10,000	4,905	64,905	40,880	40,880	.....	40,880
Tiffin	Tiffin	"	250,000	50,000	533	300,533	187,100	187,100	8,240	195,340
First	Alliance	Stark	100,000	10,800	2,588	113,388	71,860	71,860	1,846	73,706
City	Canton	"	200,000	40,000	.....	240,000	107,760	107,760	48,240	156,000
First	"	"	200,000	10,986	8,615	219,601	122,120	122,120	20,620	142,740
"	Massillon	"	150,000	50,000	4,875	204,875	129,260	129,260	3,920	133,180
Merchants'	"	"	150,000	30,000	9,964	189,964	116,220	116,220	4,990	121,210
Union	"	"	150,000	30,000	3,731	183,731	115,455	115,455	3,970	119,425
Citizens'	Akron	Summit	150,000	17,500	1,278	168,778	111,390	109,890	.....	109,890
City	"	"	200,000	.....	11,750	211,750	139,750	134,250	.....	134,250
First	"	"	100,000	50,000	44,685	194,685	122,590	115,090	5,910	121,000
Second	"	"	275,000	56,000	6,892	337,892	223,000	203,000	.....	203,000
First	Cortland	Trumbull	50,000	4,500	6,782	61,282	38,320	38,320	1,500	39,820
"	Girard	"	50,000	5,000	1,582	56,582	35,030	35,030	1,570	36,600
Kinsman	Kinsman	"	50,000	7,600	9,699	67,299	38,570	38,570	5,180	43,750
City	Niles	"	60,000	2,000	4,085	66,085	39,960	39,960	2,970	42,930

First	"	"	50,000	10,000	4,056	64,056	41,650	41,650		41,650
"	Warren	"	150,000	30,000	23,385	203,385	118,120	118,120	14,080	132,200
Second	"	"	100,000	30,000	19,101	149,101	86,700	86,700	7,200	93,900
Western Reserve	"	"	100,000	20,000	21,497	141,497	78,780	78,780	6,120	84,900
Exchange	Canal Dover	Tuscarawas	50,000	10,000	2,253	62,253	35,607	35,607	1,743	37,350
First	"	"	50,000	9,000	252	59,252	34,988	34,988	562	35,550
Citizens'	New Philadel'a	"	50,000	2,644	500	53,144	27,213	27,213	3,110	30,323
First	Van Wert	Van Wert	60,000	34,000	4,826	98,826	58,330	58,330	3,740	62,070
Van Wert	"	"	100,000	50,000	6,974	156,974	95,410	95,410	2,670	98,080
Vinton County	McArthur	Vinton	50,000	10,000	3,401	63,401	25,500	25,500	16,900	42,400
Citizens'	Marietta	Washington	100,000	20,000	9,532	129,532	89,240	74,240	10,760	85,000
First	"	"	150,000	30,000	41,678	221,678	144,560	129,560	15,440	145,000
Citizens'	Lebanon	Warren	50,000	2,300	941	53,241	34,607	34,607		34,607
Lebanon	"	"	50,000	35,000	5,114	90,114	55,364	55,364	3,210	58,574
Waynesville	Waynesville	"	50,000	12,500	5,805	68,305	44,398	44,398		44,398
Wayne County	Wooster	Wayne	100,000	40,000	3,878	143,878	87,430	87,430	5,570	93,000
120 Wooster	Wooster	Wayne	100,000	9,800	4,512	114,312	68,150	68,150	5,850	74,000
Farmers'	Bryan	Williams	50,000	20,500	1,597	72,097	42,325	42,325	2,090	44,415
First	Bryan	Williams	60,000	21,000	3,702	84,702	48,561	48,561	5,190	53,751
"	Bowling Green	Wood	50,000	5,000	3,865	58,865	33,195	33,195	2,120	35,315
"	N. Baltimore	"	60,000	4,000	1,613	65,613	35,206	35,206	4,160	39,366
"	Upp'r Sand'sky	Wyandot	105,000	40,000	6,390	151,390	99,180	79,180	5,820	85,000
Totals			$44,980,100	$10,287,079	$3,418,942	$58,686,121	$34,350,667	$34,918,426	$2,071,721	$36,990,147

121 Also from Table XII, page 335, the following:

Statement of valuation of State banks as returned to and fixed by the State board of equalization of bank shares for 1897, total (page 339), $8,410,780.

Also from Table XV, page 377, the following:

The following table shows the aggregate valuation of the property (including real estate) of express, telegraph, and telephone companies for taxation in each county, and grand total in the State, as fixed and apportioned by the State board of appraisers and assessors of express, telegraph and telephone companies, under an act passed May 10th, 1894, known as the Nichols law. Page 389, recapitulation total in State, $5,986,626.

Defendant moved the court to strike out as incompetent and irrelevant all testimony hereinbefore offered on property outside of Cuyahoga county.

Thereupon plaintiff offered in evidence extracts from a book entitled, "11th Census of the United States, 1890."

It is admitted that the book with the above title is what it purports to be, a report of real-estate mortgages in the United States at the 11th census, 1890.

Defendant objected to the offer of any of the contents of said book on the ground that the same are incompetent and irrelevant.

Counsel here read in evidence from page 94 of said census the following:

Table 29, number and amount of real-estate mortgages in force at five specified dates by States and Territories, to wit, 1886, 1887, 1888, 1889, 1890.

Ohio, 1890, No. of mortgages, 271,055, amount $259,842,188.

Also table 107, page 742 of said census, real-estate mortgage debt in force January 1, 1890, by counties.

Ohio, $259,842,188.

On acres	134,107,706
On lots	125,734,482
In Cuyahoga Co.	21,795,654
On acres	2,806,468
On lots	$18,989,186

Also on page 94 of said census, table 29, number and amount of real-estate mortgages in force at five specified dates by States and Territories above recited.

Kansas, 1890, number of mortgages 298,884, amount $243,146,826.

Also table 107, page 735 of said census, real-estate mortgage debt in force January 1, 1890, by counties.

122	Kansas	$243,146,826
	On acres	174,720,071
	On lots	68,426,755

Defendant objected to the above testimony and moved the court to withdraw the same from the record on the ground that the same is incompetent and irrelevant to the issues made.

Thereupon the plaintiff offered in evidence testimony taken from a book entitled, "Ohio Building and Loan Association Report, 1897."

It is admitted that the report from which the following data are taken is the Annual Report of the Inspector of Building and Loan Associations of the State of Ohio for the fiscal year ending December 31, 1896.

Defendant objected to the introduction of any testimony from said book as incompetent and irrelevant.

Thereupon plaintiff read from page 21 of said book: Summary of annual reports tabulated.—The following tables contain a summary of the statements of associations reporting, and tabulated comparison with the preceding year, and per cent. of increase and decrease:

Capital stock, organization, and plan of association.

Authorized capital stock, 1896	$793,000,000
Subscribed capital stock, 1896	300,435,571
Capital stock paid in, 1896	80,175,163 71
Total number of non-borrowing members, 1896	216,372
Total number of borrowing members	81,288
Total membership	297,660
Percentage of borrowing members to total membership	27.30

Record of shares, total number of shares of stock in force at the close of the association's fiscal year ending in 1896, 1,389,059 shares.

Present total number of shares upon which loans have been made, 410,176 shares.

To which testimony defendant objected and moved the court to strike the same from the record and withdraw the same upon the ground that it is incompetent and irrelevant.

123 U. S. Circuit Court, N. D. Ohio, E. D.

THE MERCANTILE NATIONAL BANK *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio. } No. 5714. Stipulation.

Admitted that the printed volume of the Report of the Auditor of the State of Ohio for 1897 shall be received and used as evidence of what it contains so far as competent, relevant and applicable to any issue involved in the above-entitled cause, and have the same effect as if the entries therefrom offered in evidence had been duly certified by him under the seal of his office.

It is admitted and stipulated that the volume of Census Reports for 1890, heretofore offered in evidence in the above-entitled cause, shall be received and used in effect so far as competent, relevant and applicable to any issue involved in said cause with the same effect as if the entries therefrom offered in evidence had been properly certified and authenticated by the officer of the United States authorized to authenticate and certify copies of the census reports

for use as evidence under the seal of his office in the courts. And the parties make a like stipulation with reference to the report offered in evidence of the Comptroller of the Currency.

It is admitted and stipulated that the volume of the Ohio Building and Loan Association Report of 1896, above offered in evidence, shall be received and used as evidence of what it contains so far as competent, relevant or applicable in the above-entitled cause, and have the same effect as if the entries therefrom offered in evidence had been duly certified and authenticated under seal of his office by the superintendent or inspector of building and loan associations in Ohio.

P. H. KAISER AND
F. S. MONNETT,
Of Counsel for Defts.

W. W. BOYNTON.

Plaintiff further read in evidence in connection with the testimony of this witness extract of Annual Report of Auditor of State (which book was heretofore admitted by all parties as being the Auditor of State's Report for 1897), reading as follows on page 340, table 13: Report of the condition of the various banking institutions or incorporations engaged in the business of banking,
124 organized under the laws of the State of Ohio before the commencement of business on the first Monday of October, 1897, as required by sections 3817–'18–'19–'20, Revised Statutes (page 346):

Cleveland, Ohio, Broadway Savings & Loan Co. individual deposits	$1,682,685 62
Cleveland Savings & Banking Co. individual dep.	58,891 30
Cleveland Trust Co. individual deposits	2,576,582 24
Columbia Savings & Loan Co. individual deposits	244,106 54
Cuyahoga Savings & Banking Co. individual deposits.	136,199 86
The Detroit Street Savings & Loan Co. individual deposits	251,749 50
The Dime Savings & Banking Co. individual dep.	2,463,268 21
The East End Savings Bank Co. individual dep.	1,425,139 20
The Euclid Ave. Savings & Banking Co. individual dep.	504,676 64
The Forest City Sav. Bank Co. individual dep.	619,537
The Garfield Savings Bank Co. individual dep.	344,321 18
The German-American Sav. Bank Co. individual dep.	324,861 72
The Guardian Trust Co. individual dep.	952,796 42
The Lake Shore Banking & Sav. Co. individual dep.	446,641 76
The Lorain Street Savings & Banking Co. individual dep.	534,816 93
The Pearl St. Savings & Loan Co. individual dep.	654,039 24
The Savings & Trust Co. individual dep.	4,245,494 54
The United Banking & Savings Co. individual dep.	1,119,882 87
The Woodland Ave. Sav. & Loan Co. individual dep.	1,470,060 39
The Society for Savings individual dep.	25,473,436 22
The Cleveland Trust Co. individual dep.	2,576,582
The Marine Bank Co. individual dep.	331,239

The South Cleveland Banking Co. individual dep.....		711,507	
The Wade Park Banking Co. individual dep.....		617,949	57
The West Cleveland Banking Co. individual dep.....		97,399	40
125 The Wick Banking & Trust Co. individual dep.....		558,860	

To all of which testimony defendant objected and moved the court to take the same from the record.

ALBERT E. AKINS, a witness produced on behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. What is your name?

A. Albert E. Akins.

Q. 2. What is your occupation?

A. At the present time county auditor of Cuyahoga county.

Q. 3. How long have you been auditor?

A. This present term commenced on the second Monday of September, 1896.

Q. 4. You have been auditor before?

A. Yes.

Q. 5. Covering what years?

A. From the second Monday in September, 1890, to the same time in 1893.

Q. 6. Are you familiar with the percentage of the actual value usually assessed upon moneyed capital in the city of Cleveland and county of Cuyahoga, such as bonds, stocks, promissory notes, credits, and the like?

A. I am familiar with the customs that are used for taxation.

Q. 7. How long have these customs been in vogue with reference to percentage?

A. The customs during my knowledge of affairs in the auditor's department are no different than they were prior to my time, that I know of.

Q. 8. The same as they have been for years?

A. Yes, I should say so.

Q. 9. What percentage of actual valuation of the securities above named have they been listed at or taxed upon?

Defendant objected to witness as an official giving any percentage, or his opinion on any percentage, or any amount other than the statute fixes under section- 2739 and 2749.

A. To answer that question I would have to explain a little; I believe there has been a misunderstanding in the minds of
126 some, both tax-payers and others, as to why they were using a per cent. I never have admitted as an official that we were using a percentage only to arrive at the actual value of a thing. I know the common talk is taking 50 per cent. or 60 per cent. or 40

per cent.—60 is the more usual per cent. But I have always used that as a per cent. to arrive at true values.

Q. 10. What percentage of the actual value which you seem to call the real value have promissory notes, bonds, stocks and credits been placed upon the duplicate at?

Defendant objected to the answer because the witness has stated that the value fixed was the statutory value.

A. Promissory notes or bonds or any credit, you have to use a percentage of its face value as you find its true value. It may be one value or another. The officers must tax a thing according to its true value. It may not be over ten per cent. of its face value. The statute so requires.

Q. 11. Suppose a promissory note of $10,000 given by a man responsible is placed before you as auditor for the assessment of its value for taxation. What would you put it in at, following the customs that have existed in Cuyahoga county and the city of Cleveland for years past?

A. If the officials found that it was listed at 60 per cent. of its face, they would allow it to pass.

Q. 12. Is it not true that all securities of an apparent value, if they were good were put in at that same percentage?

To which question defendant objected as leading, and as being cross-examination.

A. I think that was about the rule that was used to arrive at its true value in money. The question is always asked "What is true value in money of a thing?" I have heard this rule used; if a thing was valued and was sold for about two-thirds by forced sale, that is its true value in money, and that its face value was not always its true value, and that it was always considered here, and has been, that about a two-thirds rule was as high as they were to pass and call that its true value in money.

Q. 13. Is it not true that the board of equalization of this county and city have adopted, without formulating it as a rule, 60 per cent. of the face or actual value, 50 per cent. of the face value of perfectly good securities as their taxable value?

A. I think the board was working upon that tacit understanding.

Q. 14. They did not, however, put it down as a rule?

A. I think they took it as an understanding.

127 Q. 15. And where there were additions that you made to the duplicate, where you found men had innocently omitted to make a return, at what valuation did you put them in reference to their face value?

Same objection by defendant.

A. As it strikes me, I would say that one of the differences of opinion existing between the board of equalization and myself was upon that subject. I never used any absolute rule in valuing anything, unless I found the property to exist, which I believe is the

only rule that an officer can abide by under the law. If I found one thing was more valuable than another, I used a greater value.

Q. 16. You assessed the value of the national bank shares in 1897 in this city?

A. Yes.

Q. 17. At what value with reference to their face or actual value—what percentage did you adopt?

A. We did not adopt an absolute percentage. Various things enter into the assessment of each bank. They run anywhere from 50 per cent. to 65 per cent.

Q. 18. Did you not take the capital and surplus at the banks and deduct the real estate and take 60 per cent. of the remainder?

A. It was somewhere as I say from 50 per cent. to 65 per cent. We didn't use the same rule.

Q. 19. Why did you adopt from 50 per cent. to 65 per cent. in assessing the value of these shares, if such was not the amount or percentage fixed for other moneyed capital in the city of Cleveland and Cuyahoga county?

A. I had that in view as being taxed as high as other property in fixing it, and at the same time I fixed it in many cases as high as they were worth. I believe I have done so this year.

Q. 20. Which one of your deputies did the figuring?

A. O. L. Jones does the actual figuring, but I go over with him

Q. 21. Did you change the results at all that were fixed by Jones? the various points.

A. Yes, frequently.

Q. 22. Did you in 1897?

A. I presume so. I have in 1898. We would arrive at a result and raise or lower according to other circumstances.

Q. 23. In 1897 did you change the results made by Jones?

A. Yes, there is no work of that kind I let pass with any man in the office. It is always a question of understanding and we
128 called this year some men before us from every bank that we had any question about, and examined him on the matter before we came to our conclusion.

Q. 24. What did you say as to assessing the bank shares in 1897 as respects their value?

A. I said we calculated to have them somewhere from 50 per cent. to 65 per cent. of their face value and we thought that it was taxing them as high as other property.

Q. 25. What do you mean by other property?

A. All other property or any other property.

Q. 26. Money, capital, bonds, stocks and credits?

A. Yes, and other property, any property.

Q. 27. The valuation fixed upon the shares of the various national banks in the city for 1897, would you say was the full average of the money valuation fixed upon other capital?

A. That's my opinion.

Q. 28. Is it your opinion now?

A. It is.

Cross-examination of ALBERT E. AKINS.

By Mr. MONNETT:

Q. 29. You never gave any instructions to Mr. Bates or to their board to assess property such as notes, bonds, and stocks, and incorporated companies of the county of Cuyahoga at anything than its true value, did you?

A. No, sir.

Q. 30. Did you know of a rule or a custom based upon what is known as the Whitbeck case, that because the Supreme Court held in that case substantially that because other property in this county was not taxed to exceed 60 per cent., that therefore bank stock should not be taxed above 60 per cent.—that other property outside of banks should be taxed 60 per cent.?

A. I have always studiously avoided using, as auditor any per cent., so that any one could say we were using a per cent.; and if a controversy—if I can say controversy—existed between the board and myself, it was upon the rule of a per cent. I thought they ought to arrive at values without using a percentage, because it led to the making of a custom that ought not to exist.

Q. 31. The custom that is suggested by attorneys for plaintiff in this case as the rule for the taxing officers of Cuyahoga county, that you should determine the true value thereof in money of bonds and stocks, and thereafter just lop off 40 per cent.—was there any such rule as that?

129 A. I never adopted any such rule. The board used different percentages in arriving at different property.

Q. 32. To use an illustration, take a promissory note of $1,000. If that note was by a doubtful party, whose solvency was doubtful, the per cent. might have been very much greater than 40 off?

A. Yes, it might not be more than 10 per cent. of its value.

Q. 33. And if the note was drawing 8 per cent., and secured by a mortgage on good real estate, it would be higher than one that hadn't any security when it came to a test?

A. It ought to be.

Q. 34. If a question was raised on that kind of paper, you took those matters into consideration?

A. Yes, certainly, I always gave instructions to the assessors that they must value credits as they find credits, just as they found horses or cattle or anything else. And while it was a fact that we fixed upon the average horse, it was done so we might know how to tax average stock.

Q. 35. If any other rule grew up, such as a 60 per cent. rule, that was done without your orders and illegal?

A. I think the people themselves have been willing to catch onto such rules and use them, more than the taxing officers have been willing to allow them to be used.

Q. 36. How about money absolutely deposited, money in hand and money in bank. Did you ever formulate a rule that you knew of to tax it at 60 per cent. *at* the coin of the realm?

A. I have given instructions that money was money and should be taxed.

Q. 37. Each year you adopted the par value?

A. That's the instructions I gave, especially to the county assessors. I wasn't aware till very recently that the board ever considered any other basis.

Q. 38. You never gave any instructions to any assessing officer or equalizing officer to go below that rule?

A. Only that a dollar was a dollar.

Q. 39. When you reached other credits in the nature of bonds that depended upon the solvency and the management of a corporation, or notes that depended upon the solvency of the maker, you took all these matters into consideration in fixing its true value in money?

A. Just the same way we would machinery out of a manufacturing plant that was out of date, in comparison with new. One would be higher and the other would be lower.

130 Q. 40. Didn't you in your instructions to the assessors and taxing officers under you cite section 2739 itself, and say that in listing personal property it should be valued at the usual selling price thereof at the time of listing at the place where the same may be?

A. These books were always given to the assessors as part of their instructions.

Q. 41. I will call your attention to the report of the Mercantile national bank, in which their capital stock was one million, their surplus fund $200,000, and their undivided profits $94,254.77, as sworn to by C. L. Murphy, cashier, on the 28th day of July, 1897, before Albert Straus, notary public of Cuyahoga county, and reported to the Comptroller of the Currency as being the condition of their bank at the close of business July 23rd, 1897, and ask you if you had that before you or such a report?

A. We always had report. It might not have been that one, might have been the one made in May or April.

Q. 42. You took the report of the Comptroller of the Currency as near the time as their report made to you as you could?

A. Yes.

Q. 43. Do you remember that this bank made its report to you long after the statutory time?

A. We report everything to the auditor of State July 19th, but the report was made to us prior to that.

Q. 44. You have a stamp mark on that report, showing that a few days before July 12th it was received by you?

A. It was received before that. We stamped them before we sent them to the State officer.

Q. 45. Can you show when they were received by you?

A. Yes. I will furnish the date of the filing of the reports of each of these banks in suit.

Q. 46. Can you furnish the report of the respective banks in suit herein that was made to the Comptroller of the Currency, that you used as data, and have it attached as part of your testimony?

A. Yes, unless I am mistaken the report to the Comptroller of the Currency is cut out and attached to each one of these in our office, and cemented right to it. The only way I could do would be to get the book which has copies of them, and furnish them.

Q. 47. Are you acquainted with Mr. Bates, the witness that testified in the former session today in this matter?

A. Theodore M. Bates. I am quite well acquainted with him.

131 Q. 48. Do you ever come in contact with him in reference to his mode of valuing property, or have any discussions with him?

A. While he was one of the officials I was secretary of the board of three that the law has recently declared unconstitutional. I naturally came in contact with him in that way. I had no official connection farther than as secretary, with the board.

Q. 49. What has been his business since he was out of the board?

A. He is an attorney.

Q. 50. What has been his business in reference to getting taxes reduced or valuations reduced? Has he been appearing before that board for corporations and other vested interests in this city to reduce their valuation for taxation?

To which question plaintiff objected as not being proper cross-examination.

A. He has acted as attorney before the board and before the auditor on tax matters.

Q. 51. For the purpose of reducing or increasing the valuations of taxes?

Same objection by plaintiff.

A. I could not say, only I know he appeared in the interest of certain people in fixing their tax return. He appeared before me for parties that I had summoned in because of their return, through the inquisitor.

Q. 52. What was the difference between you as head of the taxing department in the county and him as a member of the board on the system of valuation, if any in your theory?

A. I worked upon the theory of valuing property without using a per cent., and they insisted upon using a per cent. We differed in that manner of proceeding. I never have used a given per cent. It is true I have known the thing came to a per cent., and a different per cent. for different property.

Q. 53. So, then, there was no rule, but it was a matter of the computation made by yourself on one theory, and they made it on other theories. But they did not take an absolute iron-clad rule in this county to fix all property at 60 per cent. in regard to its true value in money?

A. I know they used 40 per cent. for a class of manufacturing property. They assumed that that was its true value in money.

Whereupon an adjournment was had until 9 a. m., August 17th, 1898.

132 AUGUST 17TH, 1898—9 a. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: W. W. Boynton, counsel; N. T. Horr and E. S. Cook, solicitors for complainants. Frank S. Monnett, attorney general; Smith W. Bennett, assistant attorney general; P. H. Kaiser, solicitor for Cuyahoga county, Ohio, for respondents.

Cross-examination of ALBERT E. AKINS cont.

By Mr. MONNETT:

Q. 54. Did you as county auditor, at the time you fixed the values in question, have before you the returns made by these same banks to the Comptroller of the Currency, and did you use them as an element in determining their value for the purpose of taxation in any way? If so explain fully in the record.

To which question plaintiff objected as irrelevant.

A. The law requires the attaching of one of these comptroller's statements to each return. The heading of the return itself says that. We never have been quite as particular about that heretofore as this present year 1898. We always have one of these books, this Financial Review. This is of May 14th, 1897. We work upon that to see the discrepancies that exist.

Q. 55. You used the returns of these plaintiff banks as made to the Comptroller of the Currency, as one of the evidences of their value.

—. These, of course, are known to be the exact figures of the banks to the Comptroller of the Currency, and we referred to these in each individual case. And this year you will notice we have attached—and I suppose these were attached too instead of left separate—we have these as a guide to know what the difference is between their report and the comptroller's statement.

Q. 56. You have satisfied yourself that the report you have before you is an exact copy of their report?

A. This is, yes (referring to a little pamphlet entitled "Financial Review," under date of Cleveland, June, 1897, and marked for identi-cation "Akin Exhibit B").

Q. 57. Is there a copy there of the affidavit to the return of the Mercantile National Bank of Cleveland, in the data you use?

A. Yes, there is an affidavit here, of the Mercantile national bank made by C. L. Murphy, cashier, before Albert Straus, notary public, under date of May 14th, 1897.

133 Q. 58. Will you state under that report that you say you used at the date of finding these values, what was the amount of capital stock paid in according to that affidavit?

To which question plaintiff objected as being secondary proof.

A. The capital stock is a million, the surplus fund $200,000, and undivided profits $89,413.87.

To which answer plaintiff objected as not being the best evidence.

Q. 59. What did you find the value of those three elements of capital?

A. It is $1,289,000 in round numbers.

Q. 60. What real estate did they have on the tax duplicate to be deducted from that amount?

A. They had the amount of real estate $182,600, and the tax duplicate shows $117,370.

Q. 61. Making the deduction as required under the Ohio statute of the real estate as it appears on the tax duplicate of Cuyahoga county, how much was the balance left, face value to taxation of the Mercantile national bank, deducting the real estate from the face value I mean—taking the real estate from the face value?

A. It would be $1,171,630, after deducting the real estate as standing on the tax duplicate. We didn't use that amount.

Q. 62. If I understand you, the Mercantile national bank returned to the Comptroller of the Currency, on May 14th, 1897, $1,289,000, in round numbers, and they held real estate in the State of Ohio on the tax-value duplicate of $117,370?

A. Yes.

Q. 63. Deducting that they had left face value of assets $1,171,630 for that year?

To which question plaintiff objected.

A. Yes.

To which answer plaintiff objected because witness is repeating what appears in a book, which book is the best evidence of what it contains.

Q. 64. What is the amount that you actually placed upon the tax duplicate, Mr. Auditor? Give the figures.

A. A bank that has real estate is upon the duplicate in two places, and in order to know what the bank is taxed, you have to consider the two. If you mean without real estate or with real estate, the question is different. With the real estate the bank is taxed $636,690.

Q. 65. What was the tax without the real estate?

134 A. $519,320.

Q. 66. What was the per cent. with and without real estate, referring to the per cent. theory inquired of you in your examination-in-chief?

To which question plaintiff objected as not cross-examination.

A. Taking it with real estate, taking the amount assessed on the stock, the stock and real estate both as fixing the shares, $519,320 plus $117,370 makes $636,690. That's just as nearly 50 per cent. of the face value, of the reported value to the Comptroller of the Currency as you can figure.

To which answer plaintiff objected.

Q. 67. You may now give us the second proposition; what was the per cent. placed by your county upon this bank, compared with

its face value returned to the Comptroller of the Currency, with the real estate out, based on the tax-duplicate valuation?

A. It is 46.5 per cent.

To which answer plaintiff objected because witness is founding his percentage on the report to the Comptroller of the Currency in a book.

Q. 68. Will you explain again, Mr. Akins, for the record, what basis you used in making your answer as above, that you determined 50 per cent. in one case and 46½ in the other? Please make clear the process by which you arrive at that, starting in with your data?

Same objection by plaintiff

A. I have taken from the May 14th, 1897, report of the Mercantile national bank to the Comptroller of the Currency, called the Financial Review, sworn to by C. L. Murphy, cashier, and attested by the directors, sworn to before Albert Straus, attested by E. R. Perkins, Truman P. Handy and W. S. Tyler—I find from that statement that the capital stock is one million and the surplus $200,000 and the undivided profits $89,000 in round figures, being a total of $1,289,000 in round numbers.

Q. 69. That includes real estate?

A. Yes, that includes real estate amounting to $117,370, being the taxable values of real estate upon the duplicate. Deducting the real estate leaves $1,171,630. Working out the percentage of return upon this report upon the value we fixed and with the real estate value included in the amount fixed upon shares, we have 50 per cent. very close, it is a little less. But with the real estate out we have 46½ per cent.

Q. 70. Will you take up Mr. Akins, the next plaintiff in the suits at bar, to wit, The National Bank of Commerce, and furnish
135 the court with a similar statement making it as plain as you have just demonstrated the Mercantile national bank return?

Plaintiff objected to this testimony as irrelevant, and as giving the contents of a book purporting to contain returns to the Comptroller of the Currency, and taken in another case. Plaintiff also objected to the testimony taken in that case relating to the taxation of the shares of the National Bank of Commerce.

A. I find in this same Financial Review a report of the National Bank of Commerce under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated.

Q. 71. Is it the statement you had before you when you made this return?

A. Yes, being the same book we had at that time. The capital stock being $1,500,000 the surplus fund $300,000,000, the undivided profits $71,837, which makes a total of $2,071,837. This is sworn to by F. E. Ritman, cashier, before Robert F. Schade, notary public, May 20th, 1897, and attested by William Chisholm, J. H. Wade, and J. H. McBride, directors, as appears by the book. The assessment

fixed by me as auditor with real estate included would be $946,620, being 46 per cent. of the report to the Comptroller of the Currency as stated in this book. Taking the real estate out, or giving the value, $879,130 which is the shares fixed upon the bank with real estate out, it makes 44 per cent. of the face value as appears in this report.

Q. 72. You may take up and give a similar set of figures or data upon which you acted in arriving at the values of The Commercial National Bank, one of the plaintiff banks?

To which question plaintiff objected as not being cross-examination, and as being testimony taken in another case, such testimony not being testimony in common between all the cases within the stipulation made relating thereto by counsel.

A. I find in this same Financial Review a report of the Commercial national bank under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated, being the same book we had before us at that time.

To which answer plaintiff objected.

Q. 73. This report you have referred to of the Commercial national bank was sworn to by whom and attested to by whom according to this report?

To which question plaintiff objected because witness is not undertaking to speak from his own personal knowledge.

136 A. The report shows that the Commercial national bank has a statement under date of May 14th, 1897, sworn to by William P. Johnson, cashier, before P. W. Payne, notary public, under date of May 20th, 1897, attested as correct by F. J. Brown, R. R. Rhodes and J. Colwell, directors. This shows the capital stock to be $1,500,000, surplus fund $500,000, undivided profits $6,700 in round numbers, making a total of $2,006,700. The assessment fixed upon that with the real estate in amounts to $948,140, being 47 per cent. of the statement made in the Financial Review. With the real estate out it is $926,790, that being 45½ per cent. of the statement in their report.

To which answer plaintiff objected as being a recitation of what purports to be contained in a report to the Comptroller of the Currency and recited from a book.

Q. 74. Take up the next one of the plaintiff banks, The Central National Bank of Cleveland, Ohio, and state whether you had before you the same table you have now before you, and if so give the data you gathered therefrom?

To which question plaintiff objected on the ground that it is taking testimony in another case not covered by the stipulation that testimony in common may be used in all cases; and also on the ground that the question asked calls for a recitation from a book before the witness.

A. I find in this same Financial Review a report of the Central National Bank of Cleveland under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated, being the same book we had at that time. In this report the Central national bank has a statement sworn to by J. J. Sullivan, cashier, before Morris Black, notary public, on May 20th, 1897, attested to as correct by John H. Farley, N. C. Brewer and B. I. Pennington, directors, showing the capital stock to be $800,000, surplus fund $135,000, and undivided profits $42,594.33, making a total of $977,594. This bank has no real estate. The amount assessed for taxation is $483,660, being almost exactly 50 per cent. of the amount reported to the Comptroller of the Currency according to this statement.

Plaintiff objected to the above answer on the ground that it is taken from a book.

Q. 75. You have given in this Central national bank report as the total amount of assets as returned by them to the Comptroller of the Currency $977,594, and the real value, or the value assessed by the county was $483,660. What was the amount actually deducted in dollars and cents from their report?

To which question plaintiff objected on the grounds previously stated.

137 A. In figuring these per cents I have not carried them out to a fraction. It makes the balance $493,934, and the amount taxed is $483,660, about $5,000 more than one-half was thrown off.

Plaintiff objected to the answer on the same ground as above stated.

Q. 76. Will you be kind enough to take up the next plaintiff bank and furnish us the data in a similar manner, The National City Bank?

To which question plaintiff objected as being testimony which relates to another case and calls for a recitation in a book entitled Financial Review, which book is the best evidence of what it contains.

A. I find in this same Financial Review a report of the National City bank under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated, being the same book we had at that time. I find there a statement made by the National City Bank of Cleveland, sworn to by E. R. Date, cashier, before Charles Herbert Taylor, notary public, attested to as correct by Horace E. Andrews and T. W. Burnham, as directors, in which it shows the capital stock to be $250,000, surplus fund $150,000, undivided profits $146,483, making a total of $546,483. The assessed value placed upon the bank at the time was $252,830, being 46 per cent. plus, of the face value as reported in this Financial Review. The real estate is so small, only $2,370, it does not make any difference in the per cent., if we are going to treat with round numbers.

Plaintiff objected to this answer on the same ground as previously stated.

Q. 77. How much was there thrown off or discounted between the amount sworn to by their cashier on May 14th, and that fixed by you for tax values?

To which question plaintiff objected on the grounds previously stated.

A. $293,653. I am stating this all from the appearance of the book.

Q. 78. Be kind enough to take up The Western Reserve National Bank, one of the plaintiff banks, and furnish the court with a similar statement?

To which question plaintiff objected as calling for evidence taken in another case, and calling for a recitation of what appears in a book called the Financial Review.

A. I find in this same Financial Review a report of the Western Reserve national bank under date of May 14th, 1897, being the same report under the same date as the Mercantile national
138 bank just stated, being the same book we had before us at that time. It is made by G. S. Russell, cashier, sworn to before W. C. Merrick, notary public, and attested to as correct by David Z. Norton, James H. Hoyt, and Harvey H. Brown, directors. It states in this report that the capital stock was one million dollars, surplus fund $125,000, undivided profits, $17,000, making a total of $1,142,000 in round numbers. The bank had no real estate reported. The amount assessed at the time is $590,280, making 52 per cent. of the amount as shown by the statement in the report we had before us in the Financial Review.

To which answer plaintiff objected on the grounds previously stated.

Q. 79. You may state in dollars how much was the actual discount?

A. The difference would be $551,720.

Q. 80. Will you be kind enough to take up the next plaintiff bank, The First National of Cleveland, and furnish the court with a similar statement?

To which question plaintiff objected as calling for testimony taken in another case and as calling for a statement of what appears in a pamphlet called that Financial Review.

A. I find in this same Financial Review a report of the First National Bank of Cleveland under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated, and being the same book we had before us at that time. This statement is made by Thomas H. Wilson, cashier, sworn to before Alfred Clum, notary public, May 20th, and attested to as correct by J. H. Morley, James Barnett and Stiles C. Smith, as directors, under May 20th, 1897, in which the capital stock is stated $500,000,

surplus fund $100,000, and undivided profits, $8,412, being in round numbers a total of $608,400. The amount returned by me as auditor at the time for taxation is $315,900, being 52 per cent. of the amount as shown in the Financial Review report that I had before me at the time, with real estate in, but with the real estate out, it would be just 50 per cent.

To which answer plaintiff objected on the same grounds as previously stated.

Q. 81. Will you be kind enough to give the actual figures or the difference between the amount returned to the Comptroller of the Currency, and the amount that you assessed the value thereof for taxation of that year?

To which question plaintiff objected on the grounds previously stated.

A. It would be $282,500, deducting the amount taxed from the total would leave that amount untaxed.

139 Plaintiff objected to the answer as being a mere recitation of something that is contained in a book.

Q. 82. Will you be kind enough to take up the next plaintiff bank The Cleveland National Bank?

To which question plaintiff objected, on the ground previously stated.

A. I find in this same Financial Review a report of the Cleveland national bank under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated, being the same book we had before us at that time. The statement is made for the bank by T. W. Hill, cashier, sworn to before J. M. Shallenberger, notary public, May 20th, 1897, and attested to as correct by P. M. Spencer, N. O. Stone, H. Tiedemann, as directors, and showing capital stock $500,000, surplus fund $100,000, and undivided profits $13,300 making a total of $613,340, the amount fixed for taxation at the time with real estate included amounts to $517,611, making a percentage of 51 of the total, leaving a balance of $295,729.

To which answer plaintiff objected on the grounds previously stated.

Q. 83. What was the per cent. with the real estate out?

A. With real estate out it makes a percentage of 44½ of the total.

Same objection by plaintiff.

Q. 84. Will you be kind enough to take up the State national bank in the same way?

To which question plaintiff objected on the ground that it is testimony taken in another case, and calls for a recitation from a book called the Financial Review.

A. I find in this same Financial Review a report of the State national bank under date of May 14th, 1897, being the same report

under the same date as the Mercantile national bank just stated, being the same book we had before us at that time. This report was made by H. R. Sanborn, and sworn to before Edward F. Spurney, notary public, on the 20th of May, 1897, and attested to as correct by S. H. Curtiss, H. D. Coffinberry, H. C. Ellison, as directors, in which it shows that the capital stock amounted to $500,000 surplus fund $100,000, undivided profits $19,400 in round numbers, making a total of $619,400. The bank was assessed at the time with real estate included $300,800 being a per cent. of 48½ with. real estate. With real estate out, which is only $1,100, the amount would be 48 per cent.

To which answer plaintiff objected on the grounds previously stated.

140 Q. 85. What was the actual amount in figures deducted from the face value of their return, as compared with their return to the Comptroller of the Currency, sworn to and certified as you have given?

To which question plaintiff objected on the grounds previously stated.

A. Deducting the taxed amount from the total would be $618,600.

Same objection by plaintiff.

Q. 86. Take up the Union national bank and furnish us a similar statement.

To which question plaintiff objected on the ground previously stated.

A. I find in this same Financial Review a report of the Union national bank under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated, being the same book we had before us at that time. This report was sworn to by E. H. Bourne, cashier, before W. B. Whiting, notary public, May 20th, 1897, and attested by L. McBride, F. A. Sterling, J. C. Weideman, directors, in which it sets forth the capital stock to be one million dollars, surplus fund $200,000 undivided profits $46,900 in round numbers, making a total of $1,246,900. The amount as fixed by me as auditor for the assessment valuation is $627,600, being 50 per cent. plus a slight fraction of the face amount.

Q. 87. State how much in dollars and cents was the amount actually deducted from the face value of their return to the Comptroller of the Currency?

A. $619,300

Q. 88. Take up the next plaintiff bank, The Park National, of Cleveland, Ohio, and furnish us with a similar statement.

To which question plaintiff objected on the ground previously stated.

A. I find in this same Financial Review a report of the Park National Bank, of Cleveland, under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank

just stated, being the same book we had before us at that time. This statement is sworn to by John Sherwin, cashier, May 21, 1897, before Francis W. Treadway, notary public, and attested by H. A. Bishop, M. A. Marks and R. A. Harmon, as directors, in which it sets forth the capital stock to be $500,000, surplus funds $25,000, undivided profits $17,000, making a total of $542,000. The amount fixed by me for taxation at the time was $299,400 or 55 per cent. of the amount shown by the report. There is no real estate in this. The difference is $242,600.

141 Same objection by plaintiff.

Q. 89. Will you be kind enough to take up The Euclid Avenue National Bank, one of the plaintiff banks, and furnish a similar statement for that?

To which question plaintiff objected on the grounds previously stated.

A. I find in this same Financial Review a report of the Euclid Avenue national bank under date of May 14th, 1897, being the same report under the same date as the Mercantile national bank just stated, being the same book we had before us at that time. This report was sworn to by C. E. Farnsworth, cashier before H. H. Johnson, notary public, May 19th, 1897, and attested as correct by Kaufman Hays, Horace Andrews and F. F. Hickox, directors, in which it sets forth the capital stock to be $500,000, surplus fund $150,000 and undivided profits $65,220 in round numbers, making a total of $715,220. The amount fixed for taxation purposes at the time of the assessment was $316,690, being 45 per cent. with the real estate in, of the amount shown in this Financial Review report.

Same objection by plaintiff.

Q. 90. How much was the per cent. with the real estate out?

Same objection by plaintiff, on the grounds previously stated.

A. With the real estate out it would have been 41 per cent.

Q. 91. How much was the amount deducted from the face of their returns that was not reported for taxation?

To which question plaintiff objected on the ground previously stated.

A. $399,530 is the difference.

Same objection by plaintiff.

Q. 92. The tables that you have used, and which have been objected to by counsel for plaintiff, are they the same tables that are reports of the banks that you have testified concerning, which you used at the time you fixed these values as county auditor?

To which question plaintiff objected on the ground previously stated.

A. Yes, this is the same table.

Same objection by plaintiff.

Q. 93. Will you kindly furnish this set of tables of the banks you have just testified to, and make it part of your testimony and mark it Akin's Exhibit B?

To which question plaintiff objected on the grounds previously stated.

142 A. Yes, I herewith hand the same to the stenographer for the purpose of having it attached to my testimony, being page 10 to page 15 both inclusive of the Financial Review published in June, 1897, volume 1, No. 5.

To which plaintiff objected on the grounds previously stated. Said tables are herewith attached and are as follows:

AKIN EXHIBIT B.

Report of the Condition of the Cleveland National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts		$1,554,123 21
Overdrafts, secured and unsecured		6,195 96
U. S. bonds to secure circulation		50,000 00
Premiums on U. S. bonds		5,000 00
Stocks, securities, etc		26,200 00
Banking-house, furniture and fixtures		4,000 00
Other real estate and mortgages owned		19,741 68
Due from national banks (not reserve agents)		77,531 38
Due from State banks and bankers		32,122 23
Due from approved reserve agents		145,096 61
Checks and other cash items		5,973 03
Exchanges for clearing-house		10,315 73
Notes of other national banks		1,230 00
Fractional paper currency, nickels and cents		256 51
Lawful money reserve in bank, viz:		
Specie	$45,580 00	
Legal-tender notes	83,000 00	
		128,580 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		2,250 00
Total		$2,068,616 34

Liabilities.

Capital stock paid in	$500,000 00
Surplus fund	100,000 00
Undivided profits, less expenses and taxes paid	13,341 78
National bank notes outstanding	45,000 00
Due to other national banks	229,208 94
Due to State banks and bankers	66,275 80
Dividends unpaid	2,100 00

	Individual deposits subject to check	939,176 70
143	Demand certificates of deposit	48,513 12
	Bills payable	125,000 00
	Total	$2,068,616 34

STATE OF OHIO, *County of Cuyahoga*, } ss:

I, T. W. Hill, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

T. W. HILL, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

J. M. SHALLENBERGER,
Notary Public.

Correct.
Attest:

P. M. SPENCER,
N. O. STONE,
H. TIEDEMANN, *Directors.*

Report of the Condition of the Central National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts		$2,471,607 43
Overdrafts, secured and unsecured		609 42
U. S. bonds to secure circulation		100,000 00
Stocks, securities, etc		22,000 00
Banking-house, furniture and fixtures		10,500 00
Due from national banks (not reserve agents)		150,219 67
Due from State banks and bankers		17,617 40
Due from approved reserve agents		219,628 23
Checks and other cash items		12,850 09
Exchanges for clearing-house		13,969 87
Notes of other national banks		2,450 00
Fractional paper currency, nickels and cents		171 08
Lawful money reserve in bank, viz:		
Specie	$92,096 00	
Legal-tender notes	90,000 00	
		182,096 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		4,500 00
Total		$3,208,219 19

144 Liabilities.

Capital stock paid in	$800,000 00
Surplus fund	135,000 00
Undivided profits, less expenses and taxes paid	42,594 33
National bank notes outstanding	90,000 00

Due to other national banks		515,527 38
Due to State banks and bankers		253,210 11
Dividends unpaid		1,044 00
Individual deposits subject to check	$1,142,711 14	
Demand certificates of deposit	120,384 00	
Certified checks	978 97	
Cashier's checks outstanding	6,769 26	
		1,270,843 37
Liabilities other than those above stated, U. S. bond account		100,000 00
Total		$3,208,219 19

STATE OF OHIO, *County of Cuyahoga*, } ss:

I, J. J. Sullivan, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

J. J. SULLIVAN, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

MORRIS BLACK,
Notary Public.

Correct.
Attest:

JOHN H. FARLEY,
N. C. BREWER,
B. L. PENNINGTON, *Directors.*

Report of the Condition of the Commercial National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts			$3,294,321 83
Overdrafts, secured and unsecured			1,361 59
U. S. bonds to secure circulation			50,000 00
Due stocks, securities, etc			229,135 63
Banking-house, furniture and fixtures			40,000 00
145 Other real estate and mortgages owned			8,000 00
Due from national banks (not reserve agents)			176,455 45
Due from State banks and bankers			14,604 85
Due from approved reserve agents			330,805 83
Checks and other cash items			15,419 74
Exchanges for clearing-house			18,785 00
Notes of other national banks			16,455 00
Fractional paper currency, nickels and cents			176 86
Lawful money reserve in bank, viz:			
Specie	$184,491		
Legal-tender notes	60,000		
			244,491 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)			2,250 00
Total			$4,442,262 78

Liabilities.

Capital stock paid in	$1,500,000 00
Surplus fund	500,000 00
Undivided profits, less expenses and taxes paid	6,702 07
National bank notes outstanding	45,000 00
Due to other national banks	309,932 57
Due to State banks and bankers	164,479 48
Dividends unpaid	246 00
Individual deposits subject to check	1,615,902 66
Bills payable	300,000 00
Total	$4,442,262 78

STATE OF OHIO, }
County of Cuyahoga, } ss:

I, Wm. P. Johnson, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

WILLIAM P. JOHNSON, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

P. W. PAYNE,
Notary Public.

Correct.
Attest:

F. J. BROWN,
R. R. RHODES,
J. COLWELL, *Directors.*

146 *Report of the Condition of the Euclid Avenue National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.*

Resources.

Loans and discounts	$2,756,003 78
Overdrafts, secured and unsecured	3,780 90
U. S. bonds to secure circulation	125,000 00
Premiums on U. S. bonds	6,000 00
Stocks, securities, etc	170,365 53
Other real estate and mortgages owned	85,000 00
Due from national banks (not reserve agents)	132,468 23
Due from State banks and bankers	54,598 63
Due from approved reserve agents	567,182 89
Checks and other cash items	9,110 31
Exchanges for clearing-house	16,166 55
Notes of other national banks	23,196 00
Fractional paper currency, nickels and cents	145 03

Lawful money reserve in bank, viz:		
Specie	$169,000 00	
Legal-tender notes	150,000 00	
		319,000 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		5,625 00
Total		$4,273,642 85

Liabilities.

Capital stock paid in	$500,000 00
Surplus fund	150,000 00
Undivided profits, less expenses and taxes paid	65,221 46
National bank notes outstanding	112,500 00
Due to other national banks	163,927 25
Due to State banks and bankers	207,729 91
Dividends unpaid	420 00
Individual deposits subject to check	3,004,220 82
Demand certificates of deposit	2,325 00
Certified checks	12,955 25
Cashier's checks outstanding	4,343 16
Liabilities other than those above stated	50,000 00
Total	$4,273,642 85

STATE OF OHIO, } ss:
County of Cuyahoga, }

147 I, C. E. Farnsworth, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

C. E. FARNSWORTH, *Cashier.*

Subscribed and sworn to before me this 19th day of May, 1897.

H. H. JOHNSON,
Notary Public.

Correct.
Attest:

KAUFMAN HAYS,
HORACE ANDREWS,
F. F. HICKOX, *Directors.*

Report of the Condition of the First National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts	$1,517,561 48
Overdrafts, secured and unsecured	605 77
U. S. bonds to secure circulation	50,000 00
Stocks, securities, etc	30,891 08
Banking-house, furniture and fixtures	80,000 00
Other real estate and mortgages owned	2,064 00

Due from national banks (not reserve agents)		135,732 08
Due from State banks and bankers		17,202 62
Due from approved reserve agents		156,939 68
Checks and other cash items		341 01
Exchanges for clearing-house		4,170 25
Notes of other national banks		4,419 00
Fractional paper currency, nickels and cents		370 62
Lawful money reserve in bank, viz:		
Specie	$87,020 00	
Legal-tender notes	120,000 00	
		207,020 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		2,250 00
Total		$2,209,567 59

Liabilities.

Capital stock paid in		$500,000 00
Surplus fund		100,000 00
Undivided profits, less expenses and taxes paid.		8,412 77
148 National bank notes outstanding		41,340 00
Due to other national banks		380,336 90
Due to State banks and bankers		163,674 33
Dividends unpaid		513 00
Individual deposits subject to check		945,075 71
Demand certificates of deposit		18,196 08
Certified checks		1,909 20
Cashier's checks outstanding		50,109 60
Bills payable		50,000 00
Total		$2,209,567 59

STATE OF OHIO, }
County of Cuyahoga, } ss:

I, Thomas H. Wilson, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

THOS. H. WILSON, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

ALFRED CLUM,
Notary Public.

Correct.
Attest:

J. H. MORLEY,
JAMES BARNETT,
STILES C. SMITH, *Directors.*

Report of the Condition of the Mercantile National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts		$2,293,588 81
Overdrafts, secured and unsecured		1,507 48
U. S. bonds to secure circulation		470,000 00
Premiums on U. S. bonds		18,000 00
Stocks, securities, etc		54,500 00
Banking-house, furniture and fixtures		255,000 00
Other real estate and mortgages owned		45,000 00
Due from national banks (not reserve agents)		91,008 25
Due from State banks and bankers		21,980 75
Due from approved reserve agents		121,459 21
Checks and other cash items		2,494 89
Exchanges for clearing-house		8,879 50
149 Notes of other national banks		39,079 00
Fractional paper currency, nickels and cents		353 25
Lawful money reserve in bank, viz:		
Specie	$329,350 00	
Legal-tender notes	65,000 00	
		394,350 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		21,150 00
Total		$3,838,351 23

Liabilities.

Capital stock paid in	$1,000,000 00
Surplus fund	200,000 00
Undivided profits, less expenses and taxes paid	89,413 87
National bank notes outstanding	355,900 00
Due to other national banks	39,410 57
Due to State banks and bankers	9,195 86
Dividends unpaid	2,625 00
Individual deposits subject to check	1,835,709 88
Demand certificates of deposit	4,802 83
Cashier's checks outstanding	1,293 22
Liabilities other than those above stated, U. S. bond account	300,000 00
Total	$3,838,351 23

STATE OF OHIO, }
County of Cuyahoga, } *ss:*

I, Charles L. Murfey, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

C. L. MURFEY, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

ALBERT STRAUS,
Notary Public.

Correct.
Attest:

E. R. PERKINS,
TRUMAN P. HANDY,
W. S. TYLER, *Directors.*

150 *Report of the Condition of the National Bank of Commerce, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.*

Resources.

Loans and discounts		$3,524,330 37
Overdrafts, secured and unsecured		1,654 28
U. S. bonds to secure circulation		190,000 00
U. S. bonds to secure U. S. deposits		60,000 00
Premiums on U. S. bonds		10,000 00
Stocks, securities, etc		255,708 63
Banking-house, furniture and fixtures		74,000 00
Other real estate and mortgages owned		64,850 59
Due from national banks (not reserve agents)		178,708 16
Due from State banks and bankers		188,104 61
Due from approved reserve agents		329,219 22
Checks and other cash items		8,167 82
Exchanges for clearing-house		27,266 38
Notes of other national banks		23,723 00
Fractional paper currency, nickels and cents		30 56
Lawful money reserve in bank, viz:		
Specie	$303,000 00	
Legal-tender notes	100,000 00	
		403,000 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		8,550 00
Total		$5,347,313 62

Liabilities.

Capital stock paid in	$1,500,000 00
Surplus fund	300,000 00
Undivided profits, less expenses and taxes paid	71,837 17
National bank notes outstanding	171,000 00
Due to other national banks	314,190 92
Due to State banks and bankers	290,117 20
Individual deposits subject to check	2,315,062 36
Certified checks	3,551 95
Cashier's checks outstanding	18,665 32
United States deposits	51,517 87
Deposits of U. S. disbursing officers	11,370 83
Bills payable	200,000 00
Liabilities other than those above stated	100,000 00
Total	$5,347,313 62

151 STATE OF OHIO, } ss:
County of Cuyahoga, }

I, F. E. Rittman, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

F. E. RITTMAN, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

ROBERT F. SCHADE,
Notary Public.

Correct.
Attest:

WM. CHISHOLM,
J. H. WADE,
J. H. McBRIDE, *Directors.*

Report of the Condition of the National City Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts		$894,652 65
Overdrafts, secured and unsecured		6,015 92
U. S. bonds to secure U. S. deposits		100,000 00
Stocks, securities, etc		10,000 00
Other real estate and mortgages owned		2,215 07
Due from national banks (not reserve agents)		73,433 57
Due from State banks and bankers		17,942 43
Due from approved reserve agents		188,203 33
Checks and other cash items		2,856 78
Exchanges for clearing-house		21,569 68
Notes of other national banks		13,583 00
Fractional paper currency, nickels and cents		814 71
Lawful money reserve in bank, viz:		
Specie	$88,155 00	
Legal-tender notes	15,000 00	
		103,155 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		4,500 00
Due from U. S. Treasurer other than 5 per cent. redemption fund		3,550 00
Total		$1,442,492 14

152 Liabilities.

Capital stock paid in	$250,000 00
Surplus fund	150,000 00
Undivided profits, less expenses and taxes paid	146,483 45
National bank notes outstanding	90,000 00
Due to other national banks	51,693 26
Due to State banks and bankers	79,452 23
Dividends unpaid	654 00

Individual deposits subject to check	620,888 78
Cashier's checks outstanding	1,601 76
United States bond account	50,000 00
Liabilities other than those above stated	1,718 66
Total	$1,442,492 14

STATE OF OHIO, } ss:
County of Cuyahoga, }

I, E. R. Date, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

E. R. DATE, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.
CHARLES HERBERT TAYLOR,
Notary Public.

Correct.
Attest:
HORACE E. ANDREWS,
T. W. BURNHAM, *Directors.*

Report of the Condition of the Park National Bank of Cleveland, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts		$1,402,881 26
Overdrafts, secured and unsecured		1,119 64
United States bonds to secure circulation		90,000 00
Premiums on United States bonds		5,000 00
Banking-house, furniture and fixtures		10,000 00
Due from national banks (not reserve agents)		121,543 29
Due from State banks and bankers		57,939 79
Due from approved reserved agents		247,898 84
153 Checks and other cash items		347 65
Exchanges for clearing-house		9,272 44
Notes of other national banks		8,785 00
Fractional paper currency, nickels and cents		100 20
Lawful money reserve in bank, viz:		
Specie	$137,827 75	
Legal-tender notes	53,475 00	
		191,302 75
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		4,050 00
Total		$2,150,240 86

Liabilities.

Capital stock paid in	$500,000 00
Surplus fund	25,000 00
Undivided profits, less expenses and taxes paid	17,081 39

National bank notes outstanding	81,000 00
Due to other national banks	253,770 39
Due to State banks and bankers	133,355 74
Dividends unpaid	339 00
Individual deposits subject to check	1,053,606 49
Demand certificates of deposit	23,633 68
Certified checks	12,191 17
Cashier's checks outstanding	10,263 00
Liabilities other than those above stated, U. S. bond account	40,000 00
Total	$2,150,240 86

STATE OF OHIO, }
County of Cuyahoga, } ss:

I, John Sherwin, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

JOHN SHERWIN, *Cashier.*

Subscribed and sworn to before me this 21st day of May, 1897.

FRANCIS W. TREADWAY,
Notary Public.

Correct.
Attest:

H. A. BISHOP,
M. A. MARKS,
R. A. HARMON, *Directors.*

154 *Report of the Condition of the State National Bank, at Cleveland, in the State of Ohio, at the Close of Business May* 14, 1897.

Resources.

Loans and discounts	$2,428,091 57
Overdrafts, secured and unsecured	259 92
U. S. bonds to secure circulation	125,000 00
Municipal bonds on hand	100,000 00
Premiums on municipal bonds	7,110 00
Premiums on U. S. bonds	7,300 00
Stocks, securities, etc	38,500 00
Banking-house, furniture and fixtures	7,000 00
Other real estate and mortgages owned	37,432 50
Due from national banks (not reserve agents)	138,081 93
Due from State banks and bankers	135,152 18
Due from approved reserve agents	484,857 22
Checks and other cash items	13,198 56
Exchanges for clearing-house	11,854 94
Notes of other national banks	4,942 00
Fractional paper currency, nickels and cents	441 34

Lawful money reserve in bank, viz:		
Specie	$119,675 00	
Legal-tender notes	250,000 00	
		369,675 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		5,625 00
Total		$3,914,522 16

Liabilities.

Capital stock paid in	$500,000 00
Surplus fund	100,000 00
Undivided profits, less expenses and taxes paid	19,462 69
National bank notes outstanding	112,500 00
Due to other national banks	407,927 10
Due to State banks and bankers	289,635 29
Dividends unpaid	603 00
Individual deposits subject to check	2,363,009 53
Demand certificates of deposits	26,709 20
Cashier's checks outstanding	29,675 35
Liabilities other than those above stated, U. S. bond account	65,000 00
Total	$3,914,522 16

155 STATE OF OHIO, }
County of Cuyahoga, } ss:

I, Horace R. Sanborn, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

H. R. SANBORN, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

EDWARD F. SPURNEY,
Notary Public.

Correct.
Attest:

S. H. CURTISS,
H. D. COFFINBERRY,
H. C. ELLISON, *Directors.*

Report of the Condition of the Union National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts	$2,686,527 47
Overdrafts, secured and unsecured	3,711 14
U. S. bonds to secure circulation	50,000 00
Stocks, securities, etc	28,533 33
Due from national banks (not reserve agents)	394,136 02
Due from State banks and bankers	101,930 12

Due from approved reserve agents		398,659 49
Checks and other cash items		3,088 79
Exchanges for clearing-house		37,552 53
Notes of other national banks		7,343 00
Fractional paper currency, nickels and cents		285 50
Lawful money reserve in bank, viz:		
Specie	$176,257	
Legal-tender notes	165,000	
		281,257 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)		2,250 00
Total		$3,995,274 39

Liabilities.

Capital stock paid in		$1,000,000 00
Surplus fund		200,000 00
Undivided profits, less expenses and taxes paid		46,982 95
156 National bank notes outstanding		45,000 00
Due to other national banks		324,782 92
Due to State banks and bankers		422,478 08
Dividends unpaid		1,071 00
Individual deposits subject to check		1,845,591 40
Demand certificates of deposit		88,270 18
Certified checks		9,199 76
Cashier's checks outstanding		11,898 10
Total		$3,995,274 39

STATE OF OHIO, } ss:
County of Cuyahoga, }

I, E. H. Bourne, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

E. H. BOURNE, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.

W. B. WHITING,
Notary Public.

Correct.
Attest:

L. McBRIDE,
F. A. STERLING,
J. C. WEIDEMAN, *Directors.*

Report of the Condition of the Western Reserve National Bank, at Cleveland, in the State of Ohio, at the Close of Business May 14, 1897.

Resources.

Loans and discounts			$2,248,079 10
Overdrafts, secured and unsecured			1,207 51
U. S. bonds to secure circulation			50,000 00
Stocks, securities, etc			60,438 33
Banking-house, furniture and fixtures			27,000 00
Due from national banks (not reserve agents)			119,300 50
Due from State banks and bankers			62,605 51
Due from approved reserve agents			56,550 82
Checks and other cash items			9,586 55
Exchanges for clearing-house			13,461 17
Notes of other national banks			12,559 00
	Fractional paper currency, nickels and cents		592 44
157	Lawful money reserve in bank, viz:		
	Specie	$196,110	
	Legal-tender notes	71,000	
			267,110 00
Redemption fund with U. S. Treasurer (5 per cent. of circulation)			2,250 00
Due from U. S. Treasurer, other than 5 per cent. redemption fund			7,000 00
Total			$2,937,740 93

Liabilities.

Capital stock paid in	$1,000,000 00
Surplus fund	125,000 00
Undivided profits, less expenses and taxes paid	17,176 91
National bank notes outstanding	45,000 00
Due to other national banks	38,774 34
Due to State banks and bankers	55,447 41
Dividends unpaid	714 00
Individual deposits subject to check	1,503,258 50
Demand certificates of deposit	27,250 00
Certified checks	37 00
Cashier's checks outstanding	82 77
Bills payable	75,000 00
Liabilities other than those above stated, U. S. bond account	50,000 00
Total	$2,937,740 93

STATE OF OHIO, }
County of Cuyahoga, } ss:

I, G. S. Russell, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

G. S. RUSSELL, *Cashier.*

Subscribed and sworn to before me this 20th day of May, 1897.
W. C. MERRICK,
Notary Public.

Correct.
Attest:
DAVID Z. NORTON,
JAMES H. HOYT,
HARVEY H. BROWN, *Directors.*

158 Q. 94. You may state whether you have any means of ascertaining or determining when the respective plaintiff banks you have testified concerning, filed their report with you as required under the statute, and if so, take them up in the same order and furnish them to the court.

To which question plaintiff objected on the grounds previously stated.

A. The Mercantile national bank reported to our office June 15th, 1897.

Q. 95. Have you the amount that they reported for taxation? If so give the time of filing their report with you and the amounts that they returned.

To which question plaintiff objected on the grounds previously stated.

A. Here is the Mercantile national bank's return, which was received at the auditor's office June 15th, 1897. The anaylsis of this as to what is reported I have carried to the general statement of them all, and it shows that they reported $1,000,000 capital stock, and $174,500 surplus, making a total of $1,174,500, being the amount that we figured upon in arriving at the taxation of the bank.

Q. 96. The total reported for taxation by the Mercantile national bank was $1,174,500, and you actually assessed them at only $636,690. What was the difference between the report made to you of the surplus fund, and that that they had reported to the Comptroller of the Currency?

A. It would be the difference between $174,500 and $200,000, which would be $25,500.

Same objection by plaintiff.

Q. 97. What was the difference reported to you between their undivided profits and the undivided profits as reported to the Comptroller of the Currency May 14th, 1897?

To which question plaintiff objected on the grounds previously stated.

A. They reported no undivided profits. They reported surplus and undivided profits $174,540.

Same objection by plaintiff.

Q. 98. And the total report to the Comptroller of the Currency May 14th on both of these items was how much?

To which question plaintiff objected on the grounds previously stated.

A. $289,413.

Same objection by plaintiff.

Q. 99. Then for the purposes of taxation they had already made reductions before they reported to you?

To which question plaintiff objected on the grounds previously stated.

159 A. Yes.

Same objection by plaintiff.

Q. 100. How much?

Same objection by plaintiff.

A. $114,913. That's on the surplus and undivided profits.

Q. 101. Take up the National Bank of Commerce and give the date of their filing their report with you and the amount, and the amount they were assessed?

To which question plaintiff objected on the grounds previously stated.

A. National Bank of Commerce filed their report June 16th, 1897, sworn to by F. E. Rittman, cashier. The amount reported is $1,500,000 as capital stock. $32,700 were undivided profits and surplus fund, being a total of $1,532,700.

Same objection by plaintiff.

Q. 102. How much had they deducted between what they reported to you for surplus fund and undivided profit, and what they actually reported, as compared with the return to the Comptroller of the Currency a month previous?

To which question plaintiff objected because it appears that the witness does not know what amount the bank returned to the Comptroller of the Currency.

A. The difference between the total capital stock, surplus and undivided profits as reported and as shown by their report for taxation, and as shown in the Financial Review statement would be $339,137.

Same objection by plaintiff.

Q. 103. This same bank deducted $339,137 from their report as reported to the Comptroller of the Currency May 14th, 1897, and the report to you for taxation the same year in June?

To which question plaintiff objected on the grounds previously stated.

A. Yes.

Same objection by plaintiff.

Q. 104. What did you actually place them on the tax duplicate for?

To which question plaintiff objected on the grounds previously stated.

A. $946,620, with real estate included.

Same objection by plaintiff.

Q. 105. How much with real estate excluded?

To which question plaintiff objected on the grounds previously stated.

160 A. $879,130.

Same objection by plaintiff.

Q. 106. Who swore to the respective reports in June and in May, 1897, the one to the comptroller and the other to you?

To which question plaintiff objected on the grounds previously stated.

A. F. E. Rittman swore to the tax return, and the statement in the Financial Review shows the statement sworn to by F. E. Rittman.

Same objection by plaintiff.

Q. 107. The directors did not certify to the correctness of the report to you as county auditor, as they purport to have done in the report to the Comptroller of the Currency?

To which question plaintiff objected on the grounds previously stated.

A. They did not attest, no.

Same objection by plaintiff.

Q. 108. You may take up The Commercial National Bank, one of the plaintiff banks, and state when they filed their report with you as auditor of the county.

To which question plaintiff objected on the grounds previously stated.

A. The Commercial national bank filed its report on June 15th, 1897.

Same objection by plaintiff.

Q. 109. Whom is it sworn to by, and what date?

To which question the plaintiff objected on the grounds previously stated.

A. Sworn to by W. P. Johnson, before P. W. Payne, June 10th, 1897.

Same objection by plaintiff.

Q. 110. What was the amount returned to you for taxation by that report?

To which question plaintiff objected on the grounds ——.

A. Capital stock $1,500,000, surplus fund $66,000.

Same objection by plaintiff.

Q. 111. Any undivided profits?

To which question plaintiff objected on the grounds previously stated.

A. There is no undivided profits.

Same objection by plaintiff.

Q. 112. How much did the same bank on May 14th return to the Comptroller of the Currency of surplus and undivided profits?

To which question plaintiff objected on the ground that the witness knows nothing about the returns.

161 A. The report of the Financial Review states that it was $2,006,700 as the total of the capital stock.

Same objection by plaintiff.

Q. 113. What did they report to you as the surplus, capital stock and undivided profits?

Same objection by plaintiff.

A. $1,566,000 in round numbers.

Same objection by plaintiff.

Q. 114. What was the deduction that they made before returning to you for taxation, compared with the return to the Comptroller of the Currency?

To which question plaintiff objected on the grounds previously stated.

A. $440,700.

Same objection by plaintiff.

Q. 115. After they made that deduction voluntarily before returning to you, the $440,700, did you take off an additional per cent., and how much did it leave?

To which question plaintiff objected on the grounds previously stated.

A. We valued it at $948,140 for taxation.

Same objection by plaintiff.

Q. 116. Making an additional discount below what they returned of how much?

To which question plaintiff objected on the grounds previously stated.

A. $948,140 with real estate included.

Same objection by plaintiff.

Q. 117. They deducted $440,700 from their report to the Comptroller of the Currency, and how much additional did you deduct before placing it on the tax duplicate?

To which question plaintiff objected on the grounds previously stated, and on the further ground that the question has already been answered.

A. The difference would be $617,860.

Same objection by plaintiff.

Q. 118. You deducted $617,860, and they deducted $440,700, leaving the actual amount returned for taxation as finally determined how much?

To which question plaintiff objected on the grounds previously stated.

A. $948,140.

Same objection by plaintiff.

Q. 119. Take up the Central National Bank, the next plaintiff bank, and give the date of their report, who made the report, and the amount.

162 To which question the plaintiff objected on the grounds previously stated.

A. The Central national bank's report was filed June 15th, 1897, sworn to by the cashier, J. J. Sullivan, June 12th, 1897, before Morris Black.

Same objection by plaintiff.

Q. 120. What did they return to you for taxation in capital stock, surplus funds, and undivided profits?

To which question plaintiff objected on the grounds previously stated.

A. The capital stock was returned at $800,000. There is no surplus. Undivided profits was $16,600.

Same objection by plaintiff.

Q. 121. What is the total amount returned to you for taxation?

To which question plaintiff objected on the grounds previously stated.

A. $816,600.

Same objection by plaintiff.

Q. 122. What is the total amount they returned to the Comptroller of the Currency May 14th, 1897, of the same three items?

To which question plaintiff objected on the ground that it does not appear that the witness knows.

A. The statement in the Financial Review of May 20th, 1897, purporting to be sworn to by J. J. Sullivan, cashier, before Morris

Black, notary public, shows the capital stock, surplus fund and undivided profits to be $977,590.

Same objection by plaintiff.

Q. 123. How much in figures was the amount that the bank deducted between that report and what they reported to you for taxation?

To which question plaintiff objected on the grounds previously stated.

A. It was in round numbers $161,000.

Same objection by plaintiff.

Q. 124. After they took off the $161,000 how much additional was taken off by the auditor before it was finally returned for taxation?

To which question plaintiff objected on the grounds previously stated.

A. $483,660 is the amount fixed as the basis for taxation, making a difference between the amount reported and the amount fixed of $332,940.

Same objection by plaintiff.

Q. 125. In addition to their reduction, a reduction of $161,000?

163 To which question plaintiff objected on the grounds previously stated.

A. Yes.

Same objection by plaintiff.

Q. 126. Take up the National City bank next and give the date of their return to you as auditor for the purpose of taxation, and by whom the return is made, and when sworn to?

To which question the plaintiff objected on the grounds previously stated.

A. The National City bank's report was received at our office May 27th, 1897, sworn to by E. R. Date, cashier, before E. C. Forbes, notary public, on the 27th day of May. That return shows capital stock $250,000, surplus fund $150,000, undivided profits $19,800 in round numbers, being a total of $419,800.

Same objection by plaintiff.

Q. 127. What did they return under those three items to the Comptroller of the Currency as shown by the Financial Review and purporting to be sworn to by E. R. Date, under date of May 20th, 1897?

To which question plaintiff objected on the grounds previously stated.

A. It would be $546,483, as shown by the difference.

Q. 128. How much did they deduct in returning to you for the purposes of taxation, as compared with what they reported to the Comptroller of the Currency a few days before?

To which question plaintiff objected on the grounds previously stated.

A. The difference is $126,600 in round numbers.

Same objection by plaintiff.

Q. 129. How much did you put them on the tax duplicate for in Cuyahoga county that year?

To which question plaintiff objected on the grounds previously stated.

A. $252,830, real estate included.

Same objection by plaintiff.

Q. 130. Will you give in figures how much you deducted in dollars from the amount they returned to you for taxation?

To which question plaintiff objected on the grounds previously stated.

A. The difference would be $166,900 in round numbers.

Same objection by plaintiff.

Q. 131. How much did they deduct before reporting to you?

164 To which question plaintiff objected on the grounds previously stated.

A. $126,600 in round numbers.

Same objection by plaintiff.

Q. 132. Will you take up the next bank, The Western Reserve National Bank, one of the plaintiff banks, and give the date of their report to you, who made the affidavit, and the amount of capital stock, surplus and undivided profits?

To which question plaintiff objected on the grounds previously stated.

A. The report of the Western Reserve national bank, June 3rd, 1897, is sworn to by G. S. Russell, cashier before W. C. Merrick, notary public, June 2nd, 1897.

Same objection by plaintiff.

Q. 133. How much did that bank report to you for taxation under the items of capital stock, surplus fund and undivided profits?

To which question plaintiff objected on the grounds previously stated.

A. $1,000,000 capital stock, $1,800 in round numbers for surplus fund. That $1,800 is bracketed for surplus and undivided profits both, being a total of $1,001,800.

Same objection by plaintiff.

Q. 134. What was the amount the same cashier reported to the Comptroller of the Currency under the date of May 20th, 1897, according to the Financial Review report?

To which question plaintiff objected on the grounds previously stated.

A. That says $1,142,000 in round numbers.

Same objection by plaintiff.

Q. 135. How much did this bank deduct from their report to the Comptroller of the Currency as compared with the amount they returned to you for taxation?

To which question plaintiff objected on the grounds previously stated.

A. It would be the difference between $1,142,000 and $1,001,800.

Same objection by plaintiff.

Q. 136. Give the amount you deducted in addition to what they deducted.

To which question plaintiff objected on the grounds previously stated.

A. We fixed the valuation for taxation at $590,280,000, the difference between that and the amount reported to us being $411,520.

165 Same objection by plaintiff.

Q. 137. You deducted $411,520, and they deducted $140,200, or a total deduction from the face of their returns was made of how much?

To which question plaintiff objected on the grounds previously stated.

A. $551,720.

Same objection by plaintiff.

Q. 138. Next is the First national bank. Will you take that up and give the date of the filing of their report?

To which question plaintiff objected on the grounds previously stated.

A. It was filed May 21, 1897, sworn to by Thomas H. Wilson, cashier, before Alfred Clum, notary public, on the 21st day of May, 1897. The report shows capital stock $500,000, and surplus fund $5,500 in round numbers, being a total of $505,500. The valuation for taxation fixed upon that is $315,900.

Same objection by plaintiff.

Q. 139. Please examine the First national bank's return to the Comptroller of the Currency and give the date of the return before the same notary.

To which question plaintiff objected on the grounds previously stated.

A. The statement in the Financial Review would indicate $608,412, in capital stock, surplus and undivided profit.

Same objection by plaintiff.

Q. 140. Who swore to that and what date?

To which question plaintiff objected.

A. Thomas H. Wilson, cashier, before Alfred Clum, notary, May 20, 1897.

Same objection by plaintiff.

Q. 141. Sworn to the day before they swore to the report that they filed with you?

Same objection by plaintiff.

A. Yes.

Same objection by plaintiff.

Q. 142. How much did the cashier in his two reports deduct before returning to you for taxation?

To which question plaintiff objected on the grounds previously stated.

A. $102,900.

Same objection by plaintiff.

Q. 143. This same cashier, in making the two reports—one to you as auditor, and one to the Comptroller of the Currency—made a difference of $102,900 within one day?

166 To which question plaintiff objected on the grounds previously stated.

A. Yes.

Same objection.

Q. 144. How much in addition to that did you deduct from their report?

To which question plaintiff objected on the grounds previously stated.

A. $189,600.

Same objection by plaintiff.

Q. 145. After they deducted $102,900, you deducted in addition $189,600?

To which question plaintiff objected on the grounds previously stated.

A. Yes.

Same objection.

Q. 146. The Cleveland national bank is next, will you give the date of their report to you, who made the report and the amount reported?

To which question plaintiff objected on the grounds previously stated.

A. The Cleveland national bank was reported on June 15th, 1897, sworn to by T. W. Hill before R. C. Wright, notary public, on the 11th day of June, 1897. The amount reported is $500,000 capital stock. No surplus or undivided profits.

Same objection by plaintiff.

Q. 147. How much did the same cashier, T. W. Hill, report for capital stock, surplus fund and undivided profits to the Comptroller of the Currency as shown by the Financial Review?

To which question plaintiff objected on the grounds previously stated.

A. The statement in the Financial Review would indicate $613,340 in round numbers.

Same objection by plaintiff.

Q. 148. How much did the same cashier deduct from the amount returned to the Comptroller of the Currency as compared with the amount returned to you?

To which question plaintiff objected on the grounds previously stated.

A. $113,340.

Same objection.

Q. 149. How much did you then deduct in addition to that before putting it on the tax duplicate for that year?

To which question plaintiff objected on the grounds previously stated.

167 A. The amount fixed for taxation is $317,611, the difference is $192,389.

Same objection.

Q. 150. Take up the State national bank and give the date they filed their report with you and the amount they returned to you for the purpose of taxation.

To which question plaintiff objected on the grounds previously stated.

A. The State national bank filed its report June 15th, 1893, sworn to by H. R. Sanborn, cashier, before Edward F. Spurney, notary public, May 8th, 1897; capital stock in the report shows $500,000, undivided profits, $27,000 in round numbers. No surplus fund. The total reported for taxation is $527,000.

Same objection by plaintiff.

Q. 151. Will you give the amount that that same cashier returned to the Comptroller of the Currency on those same three items under date of May 20, 1897?

To which question plaintiff objected on the grounds previously stated.

A. This would indicate, in this statement of the Financial Review $500,000 capital stock, $100,000 surplus fund, and $19,462 undivided profits, being a total of $619,462, capital stock, surplus, and undivided profits, as shown in the Financial Review.

Same objection by plaintiff.

Q. 152. How much did they voluntarily deduct from the two reports taking the one as returned to the Comptroller of the Currency and the one returned to you for taxation?

To which question plaintiff objected on the grounds previously stated.

A. The difference is $92,462.

Same objection by plaintiff.

Q. 153. Will you give the amount assessed upon, or the amount you actually placed on the duplicate for that year?

To which question plaintiff objected on the grounds previously stated.

A. $300,800.

Same objection by plaintiff.

Q. 154. How much did you deduct from their returns, or how much did that leave?

To which question plaintiff objected on the grounds previously stated.

A. 226,200.

Same objection.

168 Q. 155. That is, they first deducted $92,462 before reporting to you, and you took off $226,200, and there was a total deduction of $318,662?

To which question plaintiff objected on the grounds previously stated.

A. Yes.

Same objection by plaintiff.

Q. 156. Please take up the Union national bank and give the date when they filed their report and who filed it, and the amount?

To which question plaintiff objected on the grounds previously stated.

A. The Union national bank filed their report May 21, 1897,

sworn to by E. H. Bourne, cashier, before R. C. Wright, notary public, May 21, 1897.

Same objection by plaintiff.

Q. 157. Give the figures.

To which question plaintiff objected on the grounds previously stated.

A. It shows capital stock $1,000,000, surplus fund and undivided profits, bracketed together, $46,044, making a total of $1,046,000 in round numbers.

Same objection by plaintiff.

Q. 158. How much did they report by the same cashier as sworn to under date of May 20, 1897—one day before?

To which question plaintiff objected on the grounds previously stated.

A. The statement in the Financial Review would indicate $1,246,982 capital stock, surplus and undivided profits.

Same objection by plaintiff.

Q. 159. How much did they deduct from their face value as returned to the Comptroller of the Currency the day before, as compared with what they returned to you for taxation the day afterward?

To which question plaintiff objected on the grounds previously stated.

A. The difference is $96,176. They returned $1,046,982. I put $627,600 on the duplicate.

Same objection by plaintiff.

Q. 160. How much did they voluntarily deduct from their report to the Comptroller of the Currency as compared with the report they made to you as auditor at the same time?

To which question plaintiff objected on the grounds previously stated.

A. $200,982.

169 Same objection by plaintiff.

Q. 161. In addition to that how much did you deduct?

To which question plaintiff objected on the grounds previously stated.

A. $418,400; total deduction $619,382.

Same objection by plaintiff.

Q. 162. The Park national bank is next. You may give the date of their return to you for taxation.

To which question plaintiff objected on the grounds previously stated.

A. That was reported May 18, 1897, sworn to by John Sherwin, cashier, before William H. Marlatt, May 18, 1897.

Same objection by plaintiff.

Q. 163. The directors did not attest to that report?

To which question plaintiff objected on the grounds previously stated.

A. No, they did not.

Same objection by plaintiff.

Q. 164. Please give the amount that that bank at that time reported?

To which question plaintiff objected on the grounds previously stated.

A. $500,000 capital stock and $9,325 as surplus fund and undivided profits, making a total in round numbers of $509,000, for taxation.

Same objection by plaintiff.

Q. 165. How much did they return three days later to the Comptroller of the Currency, May 20, 1897?

To which question plaintiff objected on the ground that the information sought therein is not within the knowledge of the witness.

A. In this report of the Financial Review it would indicate that their capital stock was $500,000, surplus $25,000 and undivided profits $17,000 or a total of $542,000 in round numbers, or a difference of $33,000 in the statement in the Review and their report for taxation.

Same objection by plaintiff.

Q. 166. How much did they deduct before returning to you?

To which question plaintiff objected on the grounds previously stated.

A. $33,000.

Same objection.

Q. 167. How much did you deduct in addition to what they deducted before you put it on the tax duplicate?

To which question plaintiff objected on the grounds previously stated.

170 A. The amount returned for taxation is $299,400. I deducted $209,600 from their report.

Same objection by plaintiff.

Q. 168. What was the amount in figures you put them on the duplicate at?

To which question plaintiff objected on the grounds previously stated.

A. $299,400.

Same objection.

Q. 169. Take up the Euclid Avenue national bank, please, and give us the date of the filing of their report with you, and the amount?

To which question plaintiff objected on the grounds previously stated.

A. The statement of the Euclid Avenue national bank was filed June 3, 1897, sworn to by C. E. Farnsworth, cashier, before C. J. Gould, notary public, on the second day of June, 1897. The report shows the capital stock to be $500,000, surplus fund $5,000, total $505,000, reported for taxation. The amount listed for taxation is $316,690.

Same objection by plaintiff.

Q. 170. How much had this bank deducted of its own accord from the report to the Comptroller of the Currency, before reporting to you for taxation?

To which question plaintiff objected on the grounds previously stated.

A. The Financial Review statement of May 14, 1897, indicates capital stock $500,000, surplus fund $150,000, and undivided profits $65,221, total $715,220, being a difference of $210,220.

Same objection by plaintiff.

Q. 171. This bank deducted $210,220?

To which question plaintiff objected on the grounds previously stated.

A. Yes.

Same objection by plaintiff.

Q. 172. How much did you deduct from that in dollars and cents?

To which question plaintiff objected on the grounds previously stated.

A. The difference between $505,000 and $316,690 would be $188,310.

Same objection by plaintiff.

Q. 173. Could you summarize that without too much trouble, and make a statement how much the twelve national banks returned to the Comptroller of the Currency in those three items, and how much they voluntarily deducted in the month of May?

171 To which question plaintiff objected as undertaking to give testimony in each particular case of what was done by the Comptroller of the Currency in the others.

A. Taking the amounts from the banks as reported in the Financial Review the total would be $12,272,000 in round numbers. The amount fixed for taxation is $6,036,220.

Same objection by plaintiff.

Q. 174. What per cent. would that make of the entire twelve banks? What would it average on the amount actually placed on the face of the duplicate in 1897 as compared with the amount that they returned and swore to the Comptroller of the Currency in May, 1897?

To which question plaintiff objected as grouping all the banks together and holding each responsible for the actions of the others.

A. The percentage would be 50 minus, or 49 plus. That is, the amount returned for taxation would be 50 per cent. of the amount reported to the Comptroller of the Currency—not returned for taxation but fixed for taxation.

Same objection by plaintiff.

Q. 175. Take the amount that was actually deducted, the $6,000,000, and then the amount deducted by your board and the amount voluntarily deducted by them, and it amounts to $6,235,780?

To which question plaintiff objected on the grounds previously stated.

A. The amount placed upon the duplicate for taxation, and the amount reported to the Comptroller of the Currency—the difference is $6,235,780.

Same objection by plaintiff.

Q. 176. This $6,235,780 is obtained by what they have voluntarily reduced or deducted from their returns to you, and what you have subsequently deducted?

To which question plaintiff objected on the grounds previously stated.

A. Yes, through the two combined deductions.

Same objection by plaintiff.

Q. 177. The total amount returned for taxation is $6,036,220, and the amount deducted is $6,235,780.

To which question plaintiff objected on the grounds previously stated.

A. That's right.

Same objection by plaintiff.

Q. 178. Or the amount actually returned for taxation being less than 59 per cent.?

172 To which question plaintiff objected on the grounds previously stated.

A. 49 plus or 50 minus.

Same objection by plaintiff.

Q. 179. How much would that amount to in actual dollars in tax for the year, the $6,235,780?

To which question plaintiff objected as irrelevant, and as grouping the question, giving it in relation to all the banks instead of confining it to one.

A. The taxes upon the reduction made by the auditor and the banks themselves, from the report made to the Comptroller of the Currency as shown in this Financial Review, being a total value of $6,235,780 at the rate of $293, which was the rate for the year 1897, the total amount of tax upon that would be $182,709 in round numbers.

Same objection by plaintiff.

Q. 180. That is, if the national banks of this city, the twelve in suit, have returned to the Comptroller of the Currency their stock, surplus and undivided profits, at its true value in money, then they have been discriminated in favor by this system of deduction in the sum you have given, $182,709. If they reported that at the true value in money according to the statute, then they have been exempted to that amount?

To which question plaintiff objected on the grounds previously stated and especially to the language "discriminated in favor."

A. If the amounts reported in the Financial Review to the Comptroller of the Currency are the true value in money of their surplus and undivided profits and capital stock, then the amount fixed for taxation is $182,709 less than the tax upon the true value of money.

Same objection by plaintiff.

Q. 181. And the statute, No. 2337 of Ohio requires that the bank itself list its personal property at its true value in money, does it not?

To which question plaintiff objected.

A. I think it does. The question is, what is the true value in money. The bank uses the word "return" instead of "list."

To which answer plaintiff objected.

Q. 182. What did you require of these plaintiff banks to return to you under your duties as county auditor?

To which question plaintiff objected because the statute provides.

A. I furnished them a blank requiring them to make a return to my office on or before the second Monday in May of each
173 year, and report in duplicate under oath, exhibiting in detail the resources and liabilities of the bank at the close of busi-

ness on the first Wednesday after the first Monday in May preceding such report, together with a full statement of the names and residences of the stockholders, with the number of shares held by each and the par value of each share, as well as a copy of the report to the Comptroller of the Currency made next prior to the second Monday in May of the year in question, to accompany the return for taxation.

Q. 183. Did you give such a blank to each of the twelve plaintiff banks in question in the year 1897?

A. I did.

Q. 184. Did they comply with your request in that particular?

To which question plaintiff objected on the ground that the record shows what their action was.

A. I furnished all the banks early in May these forms furnished me, although I did not give the exact date.

Q. 185. In that part of the instruction requesting them to accompany their return with the report of the Comptroller of the Currency made next prior to the second Monday of May, 1897, or of that year, did they give you a report known as the Financial Review, or did they ratify it or approve of it as being a correct report in your dealings with the fixing of values, being the same one you have stated in your deposition and made "Akin Exhibit B" of this record?

To which question plaintiff objected as leading, and as grouping banks together for a general answer.

A. I don't remember now whether a statement made to the Comptroller of the Currency was with this at the time they came to our office or not. I supposed when I sent for them yesterday, I would find attached to each the report that was furnished us. It is possible we failed to attach, and then for convenience sake used the book that had the same identical reports that they furnished us, if they did furnish them. This year I find the report attached to each that was furnished which I was more careful to exact.

Q. 186. Under section 5211 of the Revised Statutes of the United States referring to this report to the Comptroller of the Currency, where it states that there are not less than five reports during each year to be made, verified by the oath of the president or cashier and attested by the signature of at least three of the directors, and which is required to be printed in a newspaper of general circulation in the place where the bank is situated—that would be in one of your Cleveland papers would it not?

A. Yes.

174 Q. 187. As I understand you, instead of taking the clipping from the Cleveland paper of each of the plaintiff banks you have an exact copy published in book form, which you have made "Akin Exhibit B" for convenience?

A. That's right. I secured this from the Financial Review, No. 409 Perry Payne building. They are sent to my office. Then I assured myself it was the same.

Q. 188. You took the official publication as required under section

5211 R. S. U. S., requiring it to be published in one of the papers in Cleveland and compared it, and found it the same as the Financial Review publication from which you have testified?

To which question plaintiff objected.

A. Yes, I think you will find the copy of the report sent to the auditor of State board—you will find this attached to them. This year we attached to both.

Q. 189. You may state what you did with the copy of the official report taken from one of the Cleveland papers?

To which question plaintiff objected as immaterial.

A. I took from the Cleveland paper the report of the bank of the same date that it showed in the Financial Review, and attached that to the report kept by us and sent the Financial Review to the State auditor for his convenience. I sent the Review with the bank reports, and kept the clipping *him*self and the return.

Q. 190. When you examined the dates and amounts of the official return and in the Financial Review, you found them the same?

A. Yes, or we would not have used it. I verified them. I always do that. That's a precaution the office takes.

Q. 191. The Financial Review that you have made "Akin Exhibit B" is an exact copy of the one you sent to the State auditor?

To which question plaintiff objected as leading.

A. Yes, the Financial Review is an exact copy of the clipping of the papers we attached to the State auditor's paper, if that's the way we did it in 1897. This year we sent the book, certifying it as the same as the clippings we have in our office.

Q. 192. In your instructions to the plaintiff banks you have given generally, to which counsel has objected, was that the same instruction given to each bank?

A. Yes. The instructions are printed upon the forms that each bank had mailed to them, and that they reported upon. They are the same instructions.

Q. 193. And they returned on those instructions?

A. Yes, they returned on those instructions.

Q. 194. The figures you have given in your foregoing testimony are taken from blanks filled out, signed and sworn to by
175 the officers of the respective banks and on the blanks you sent?

A. Yes, that's right.

Q. 195. And in that instruction you asked for a detailed report of the resources and liabilities of the bank at the close of business on the first Wednesday after the first Monday of May preceding such report?

A. That's right.

Q. 196. So that when you have testified to the different dates in which these reports were filed, and the different dates in which they are purported to have been sworn to, the statement so sworn

to and so filed was and is of the condition of the bank at the close of business on the first Wednesday after the first Monday in May?

A. We used these as being the nearest report that came to it, May 14th, 1897.

Q. 197. The report as sworn to on May 20th to the Comptroller of the Currency was the nearest official report corresponding to the report given you as auditor?

A. Yes.

Q. 198. And these are the reports you have been testifying from in your preceding answers herein?

A. Yes, that's right.

Q. 199. Are those the copies or exact statements that the banks themselves furnished to you in compliance with your instructions as being their report to the Comptroller of the Currency to the best of your belief?

A. Yes, they are the ones. The clippings of the papers that was furnished to us in every instance were the same as in this book, otherwise we would not have used this book.

Q. 200. And the banks that were ordered to furnish you such official public reports assented at the time, or did they not, to the use of that same table you testified to, or weren't they before you at all?

A. I ought to explain possibly a thing that has not come out. In every case where I notice a discrepancy have seen that somebody answered for the cashier in some a-tion, I call the bank's attention to it and they appear before me and I affix, after having a conversation with the bank, that value for taxation, based upon the facts as presented to me orally. And that I this year corrected by having a statement in writing from the banks, that I have now turned over to the State auditor to explain these discrepancies between the two.

Q. 201. You have no record of any such testimony of 1897?

A. No.

176 Q. 202. You can't give the name of a witness in each of these plaintiff banks?

A. We called the cashier in every instance. It may have been that somebody answered for the cashier in some instances, but the cashier was the man we got after. My duties over there are quite considerable, and I have to take care of the detail of every department. Mr. Jones being a bank man, he went through this.

Q. 203. What Jones is that?

A. My deputy. He was a bank man at one time, and I let him go through and work out this detail and find out the discrepancies. I was always present.

Q. 204. He is a stockholder in one of these plaintiff banks himself?

A. I cannot say, I presume so.

Q. 205. What bank was he connected with?

A. He was at one time receiving teller or paying teller of the National Bank of Commerce.

Q. 206. In the report of 1897 in which you report the stockholders

and the amount of stock, you have O. L. Jones, 75 shares in the National Bank of Commerce. Is that your deputy?

A. I presume it is. I know of no other O. L. Jones.

Q. 207. Does he own stock in any of the other plaintiff banks?

A. He was one of two heirs, I presume probably in the bank's property came to him. I consider him one of the most honorable men you can find.

Whereupon further hearing of depositions was adjourned until 1.30 p. m., this day, August 17th, 1898.

AUGUST 17TH, 1898—1.30 p. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: W. W. Boynton, counsel; N. T. Horr and E. S. Cook, solicitors for complainants. Frank S. Monnett, attorney general, Smith W. Bennett, assistant attorney general; P. H. Kaiser, solicitor for Cuyahoga county, Ohio, for respondents.

Testimony of ALBERT E. AKINS resumed.

Redirect examination.

By Judge BOYNTON:

Q. 208. The statement you made in your cross-examination,
177 relating to the reports made by the various national banks of the city to the Comptroller of the Currency, were taken from "Akin Exhibit B," which is contained in the Financial Review?

A. Yes.

Q. 209. And they were wholly obtained from that?

A. Today, you mean?

Q. 210. Yes.

A. Yes.

Q. 211. Do you not know that in reporting to the Comptroller of the Currency the banks include all assets standing or appearing on their books, without reference to whether they are good or bad?

To which question defendant objected on the ground that the statute provides what they shall report, regardless of the opinion of the witness.

A. I know they make a report, and of course I do know that some are good and some are bad. I don't know the requirements of the Comptroller of the Currency however.

Q. 212. I am not dealing with the statute or with its requirements, but in making the statement to the Comptroller of the Currency, it is quite natural that the banks should wish to have as good a showing as they reasonably can. And do you not know, therefore, that in making the report of their assets to the Comptroller of the Currency, they put in what appears on their books to be assets, without reference to whether the maker of this or that obligation is solvent or not?

A. I would not know that from actual knowledge of their affairs

or the requirements. I know it appears to be so from the reports and from what I know of taxation.

Q. 213. Do you know what proportion or percentage of the assets of the plaintiff bank, The Mercantile National Bank, were worthless or of little value in the year 1897?

A. We inquired into it, knowing that there was a discrepancy between their bank return for taxation and the statement made to the comptroller. We inquired into it in every case.

Q. 214. What did you ascertain?

A. From their statements made to me verbally, I felt disposed to draw the conclusion which I did for taxation.

To which answer defendant objected as incompetent, irrelevant and hearsay, and as drawing a conclusion; and moved the court to order the same stricken from the record.

Q. 215. Did the cashier of the Mercanile national bank with whom you conversed about the Comptroller of the Currency in the year 1897, inform you that among the assets of the Mercantile national bank reported to the Comptroller of the Currency some were uncollectible?

178 To which question defendant objected as being hearsay evidence requiring an admission in plaintiff's favor.

A. They made that statement to us, or the return would have been otherwise than it was. I might say the amount fixed for taxation would have been otherwise, if the statement had not been made.

Q. 216. I see that in fixing the valuation of the shares of the Mercantile national bank, and the other national banks in the city of Cleveland by you for the year 1897, that in all instances you deducted 60 per cent. of the reported capital, surplus and undivided profits exclusive of real estate. Explain how you happened to do that.

A. I don't think it's exactly 60 per cent. It's close to that. Some are above and some are below.

Q. 217. How did you happen to land about the figure "60" in fixing your percentage?

A. One main reason was that the three years before it had been to about that notch.

Q. 218. You mean for the county of Cuyahoga?

A. Yes, and I think it had been inserted on the blank of the year before, and the State board approved it, and I thought anything the State board approved I would do next year.

Q. 219. What do you mean to say the State board did in the year 1896, with reference to fixing the value of bank shares at 60 per cent. of their capital, surplus and undivided profits?

To which question defendant objected because it pertains to a time not embraced within the period for which reduction are now sought.

A. In all matters of taxation the habits of doing one year leads

to doing another. The custom in the manner of taxing banks or any other property one year would lead with the same property another year. For instance, if one kind of property was taxed about a given per cent. of its face value, and another came in next year, it would be the rule largely. I had been out three years and all these matters were matters recalling what we had done, and we went back over the years before to see what had been done and especially the year before, to see what the State board had approved especially in banks and railroads, and thinking that they had been dealt with justly, all we wanted to do was to deal justly in the future, and so we acted somewhat upon what had been done the year before.

Defendant objected to the answer.

Q. 220. And the year before was the year 1896?

A. Yes.

179 Q. 221. What did you state a short time ago in regard to noting on your return to this State board of equalization for bank shares 60 per cent. as the value fixed?

A. I didn't say I noted. I noticed it had been noted the year prior to 1897.

Q. 222. Who noted it?

A. My predecessor, indicating here where it says "leaving taxable valuation of shares at — dollars," he wrote in "60 per cent." in large figures, and the amount that was here was 60 per cent.

Q. 223. And the amount carried out was 60 per cent. of the capital, surplus and undivided profits?

A. Yes, as reported to him by the bank for taxation.

Q. 224. You may state whether or not the report sent by the auditor of the county to the auditor of the State board of equalization contained that notation?

To which question defendant objected.

A. Ours did not.

Q. 225. I mean in 1896?

A. In 1896 it did as indicating the ones that he retained. I do not know what the ones that he sent down there contained. If he sent an exact copy they contained that writing.

Q. 226. That report of the county auditor for the year 1896 was approved by the State board of equalization for banks?

A. Yes, there is an approval certifying that they were left the same as the auditor had fixed them for that year.

Q. 227. You may state whether or not in fixing the valuation for bank shares in 1897, you were guided in your judgment by the valuation fixed in 1896 by the State board?

To which question defendant objected.

A. I was guided by the former return largely.

Q. 228. How do the returns of the years 1894 and 1895, as to percentage of valuation fixed for bank shares, agree with the reported valuation of 1896 and 1897?

To which question defendant objected.

A. I could not say without looking at the returns. All I can remember is knowing that there is such a notation on 1896.

Q. 229. When you became auditor the last time, do I understand you to say that you examined back a few years to see what percentage of the par or actual value securities and other obligations had been returned at for valuation in this county?

A. I naturally went back, because of an inquiry into one class of property. I go back to see what has been the custom.

180 Q. 230. Did you in 1897 follow the custom which you ascertained to exist for the few years preceding 1897?

To which question defendant objected.

A. Of course, I could not get around that from the very fact that it is so. It's there in figures.

Q. 231. You did follow the percentage of valuation that had been practiced for the years preceding?

A. Yes. I have said I was governed by the practice and custom that had been established in all kinds of property.

Q. 232. And in fixing the value of the bank shares for the year 1897, you were guided by that practice and custom?

A. I had that in view at that time. The banks are very apt to call our attention to the fact that that was the way it had been, and looking out for their own interests, lead us into looking into it, even if we hadn't thought of it. Our attention is called to all matters of custom by the outside public, without our having to hunt it up.

Q. 233. And having your attention called to it, you looked it up and fixed the valuation for 1897 as it had been fixed upon money, capital and credits and bank shares in previous years in this county?

A. I had banks exclusively in mind when I was assessing banks as they had been before.

Q. 234. Did you assess them in 1897 on the same percentage of valuation that they had been assessed the years before?

A. Yes, I think you will find the same percentage.

Q. 235. Was Mr. Guilbert, the present State auditor, the auditor of State and member of the board of equalization in the years 1895, 1896 and 1897?

A. He was in 1896, and I think he was in 1895. I am sure he was in 1896.

Q. 236. Do you know also that Governor Bushnell, who is now on his second term as governor, was also a member of the board of equalization for bank shares in the year 1896, as well as in the year 1897?

A. Yes, he must have been if he is on his second term.

Q. 237. And our distinquished brother who is present here, the attorney general, was he also on the board in 1896 and 1897?

A. He was in 1897, and he knows best as to 1896.

Q. 238. Assuming that the same board, the present board for the equalization of bank shares, viz: the governor, the auditor of State

and the attorney general, was composed of the same individ-
181 uals in 1896 that it was composed of in 1897, you then had the direction or precedent for your action in 1897, that they had fixed for the value of bank shares in the year 1896?

A. Yes, that had an influence upon my action.

Q. 239. You may state whether or not you fixed the percentage of actual value in the year 1897 at as high a figure as the State board of equalization fixed it for 1896?

A. I think it will average a little higher. It does on some banks.

Q. 240. I am speaking exclusively of the banks in Cleveland?

A. I thought some were deserving of a higher tax than others.

Q. 241. So you fixed it somewhat higher than the State board of equalization fixed it for 1896?

A. I think so, if I remember.

Q. 242. You may state whether or not the various shareholders who claim deduction in the Mercantile national bank for the year 1897, of their debts from the value of bank shares filed with you, or did the cashier of the bank for them, any affidavits?

A. Yes, the banks I think nearly all filed affidavits for deduction.

Q. 243. I understand you to say that the cashiers of the various national banks, the cashier of the Mercantile national and all others, did make their returns to you as required by the statute, and also filed with you affidavits made by the individual shareholders, claiming deductions in form, purport and effect of the one I now read.

Defendant objected to the introduction of the affidavit proposed now to be read and claimed to be given in the question in said form, for the reason that the original parties to this suit represented by the cashiers referred to are all living in the city of Cleveland, and the original affidavits can be had as the best evidence to be produced.

Defendant also objects for the further reason that the one in question is for the year 1898.

Counsel for plaintiff reads the following affidavit:

Affidavit.

"STATE OF OHIO, }
Cuyahoga County, } ss:

Edwin R. Perkins, being first duly sworn on his oath says that the Mercantile National Bank of Cleveland, Ohio, is a corporation organized and doing business at Cleveland, Ohio, under the act of
182 Congress known as "The national bank act," and the acts amendatory thereto, and its stockholders are subject to the provisions of, and entitled to the benefits conferred by section 5219 of the Revised Statutes of the United States, that on the day next preceding the second Monday of April, A. D. 1897, affiant was the owner of 325 shares of the par value of $100 per share,

and from said day next preceding the second Monday of April, 1897, he has continued to own and now owns said number of shares of stock in said bank. Affiant further says that on said day next preceding the second Monday of April, 1897, he was indebted and owing to others, and hitherto has continued to owe and still owes to others in legal *bona fide* debts the sum of $32,500 over and above any and all credits which by the law of Ohio he is entitled to deduct therefrom, and from which excess of debts over credits should be deducted $32,500, which deduction he claim- at the hands of the listing, assessing and taxing officers. Affiant says that in making up the sum of said debts owing to him in excess of the credits deducted therefrom, he has not included any claim or obligation which section 2730 of the Revised Statutes of Ohio requires to be rejected, which he is ready to make appear if required or permitted, by an exhibit of his indebtedness.

EDWIN R. PERKINS."

This is signed and sworn to before a notary.

A. Yes.

Q. 245. I will ask you whether or not that affidavit is of the same kind as the others?

A. Yes, I think all the affidavits are the same as this, in printed form.

Q. 246. Your statement in the cross-examination to the effect that the cashiers of the several banks made certain deductions from the capital, surplus and undivided profits, those deductions you understood were of bad debts?

A. Yes. I understood that they were matters in such a chaotic condition that they claimed a reduction on that account, and using the same rule we did with an affidavit of bad credits, it was out.

Q. 247. You treated it as a return of credits that were really credits of solvent persons?

A. Yes.

Q. 248. You have stated that you were auditor prior to your present incumbency?

A. Yes.

Q. 248. When?

183 A. From September, 1890, to September, 1893.

Q. 250. You may state whether during those years the valuation of national bank shares in the city of Cleveland was fixed at substantially the same percentage?

Objected to because the witness does not know personally.

A. Yes, that's my recollection. The records will show.

Q. 251. You may state whether the valuation of bank shares has been fixed at 60 per cent. of their actual value in the county of Cuyahoga by the auditor of the county since the decision of the Supreme Court of the United States in the case of The Mercantile National Bank against Horatio N. Whitbeck, treasurer of Cuyahoga county, in 1888?

A. I would not know anything except the years I was auditor.

Q. 252. You looked back into the records of your predecessor Mr. Shellentrager to ascertain what valuation he placed upon national bank shares with reference to their actual value?

A. I did the year 1896.

Q. 253. What did you find?

A. I found it written "60 per cent."

Q. 254. Do you say that that value for the years you were auditor from 1890 to 1893, and for the years 1897 and 1898, was about the percentage that was fixed upon other moneyed capital and credits owned by individual citizens?

A. I said that in assessing banks, about the only thing we thought of was the way the banks had been assessed. Never having examined the powers or the customs, we drifted along as the custom had been, without regard to property.

Q. 255. You may state whether or not the values you fixed on State bank shares was the same percentage as the valuation on national banks?

A. They were classed in the same rule in value.

Q. 256. You may state whether for the series of years when you were auditor, deductions of legal *bona fide* debts of the shareholders were made and allowed till the action of the State board in 1897?

To which question defendant objected as incompetent and irrelevant.

A. I think there was a time when the deductions requested were held in abeyance at least, but finally I think it was through the action of the supreme court that the board stopped it.

184 Q. 257. Prior to the action of the supreme court in the decision of the Chapman case you may state whether deductions had been allowed.

A. They had been allowed.

Q. 258. You may state whether they had been allowed and approved of the same grade and character as filed with you for the year 1897 in affidavits?

To which question defendant objected.

A. It was always upon the affidavits when they were allowed.

Q. 259. Affidavits of the kind above recited?

A. Yes.

Q. 260. You may state whether the form of the returns of the Mercantile national bank and the other national banks of Cleveland embracing all these who have actions against the treasurer in this court—were the same in the year 1897 that they were for former years?

A. The form?

Q. 261. Yes.

A. Yes, the forms were made the same since my knowledge of the county.

Q. 262. And the character of the reports is the same? I mean in form?

A. Yes, the form is the same.

Q. 263. Will you state, Mr. Auditor, what your personal recollection is as to the time that you sent blank forms to the cashiers of the various banks in the year 1897?

A. I left those with my deputy Mr. Jones, to mail out. We try to be very prompt in our office in everything we do. We send them out the moment we receive them from the State auditor. Probably they would not lay in our office more than over night. We had no date, and its does not require a letter with them because they know what it means, and we sent the blanks merely. My recollection is, this year I sent a letter.

Q. 264. I am speaking of the year 1897?

A. I didn't do that. I had no stamp upon it in 1897 showing when they were sent out, but I have a stamp when they returned, but I cannot tell you the date.

Q. 265. Do you know from personal knowledge whether or not they were sent to the various banks in the month of May, 1897?

A. Yes, we got a great many of them back in May, and they are all written May, 1897.

Q. 266. What time did you forward the valuation fixed by you to the State auditor in 1897?

A. I think it was the 19th of July.

185 Q. 267. All sent together to the State auditor?

A. Yes, all sent together.

Q. 268. Is there a return there made to you on May 18th?

A. Yes, here is one May 18th, the Park national bank.

Q. 269. You didn't send that return to Columbus until July 19th?

A. No, they were sent together.

Q. 270. You sent them to Columbus together?

A. Yes. I had to go out and hurry up some of them and get them in.

Q. 270. When was the action of the State board certified back to you, to be placed upon the duplicate of the county by the State board of equalization for bank shares for the year 1897?

A. I have the auditor of State's certificate here in regard to the amounts that they had added. It is dated Columbus, December 6th, 1897. They gave the names of the banks, the assessed value by the county auditor, and the action taken by the State board showing the total, signed by Guilbert, auditor of State.

Q. 271. Will you read that paper that it may go into the record?

A. Witness reads:

Auditor of State's office.

COLUMBUS, OHIO, *December* 6, 1897.

Auditor of Cuyahoga county.

DEAR SIR: You are hereby notified that the State board of equalization of bank shares has finished its labors and has fixed the valuation of the banks of your county as follows:

Name of bank.	Assessed by county auditor.	Action by State board added.	Amount as fixed deducted by State board.
Central National Cleveland	483,660	100,000	583,660
Cleveland " "	273,600	65,000	338,600
Commercial " "	926,790	240,000	1,166,790
Euclid Ave. " "	282,450	55,000	337,450
First " "	279,900	55,000	334,900
Mercantile " "	519,320	123,000	642,320
National Bank of Com. "	879,130	178,000	1,057,130
National City "	250,460	77,000	327,460
Park National "	299,400	10,000	309,400
State " "	289,800	60,000	349,800
Union " "	627,600	117,000	744,600
Western Reserve "	590,280	74,000	664,280

The above is exclusive of real estate.

Respectfully,

W. D. GUILBERT,
Auditor of State.

186 Q. 272. You may state whether or not the valuation of incorporated bank shares for the year 1897, as equalized by the State board for bank shares, was certified back to you prior to that date. Did you have any other certificate?

A. No, sir. They all were under that date.

Q. 273. You may state, when you received the auditor's letter whether on the 6th or 7th.

A. I have a letter here dated December 9th that came right along with it undoubtedly.

Q. 274. You may read the letter received by you from the auditor of State December 9th, 1897.

A. Witness reads the following letter:

Auditor of State's office.

COLUMBUS, OHIO, *December* 9, 1897.

Honorable A. E. Akins, auditor, Cuyahoga county, Cleveland, Ohio.

DEAR SIR: In the hurry to get off report of final action of State board of equalization of banks to you, the fact was overlooked that the board had at one of its called meetings acted upon the returns of the South Cleveland Banking Company and the valuation as fixed by you, viz: $83,380 was affirmed. You will therefore kindly have the valuation conform to your original figures. Hoping this may cause you little inconvenience, I remain,

Very truly yours,

W. D. GUILBERT,
Auditor of State.
TAYLOR.

This letter came after I had received the others, and they called my attention to this and I made a memorandum of that fact and acted according to the advice given.

Q. 275. You will furnish these affidavits, and the letters to the cashier that accompanied them if you have them?

A. Yes. Last year I think there was no letters.

Counsel for defendant objected to any affidavits being introduced, and to any letters.

Recross-examination of ALBERT E. AKINS.

By Mr. MONNETT:

Q. 276. Do the affidavits that you have testified to in the re-examination purport to be the affidavits of the cashiers of the banks?

A. No, it is the affidavit of the stockholders.

187 Q. 277. This affidavit is sworn to by an attorney-in-fact, and not by the owner of the bank stock at all, is it not?

To which question plaintiff objected on the ground that the affidavit put into the hands of the witness is not the affidavit plaintiff has given in evidence.

A. This is what I brought over as a sample for the printed form, and we insert the names of the parties. This affidavit was made by the attorney-in-fact.

Q. 278. Do you know how many affidavits were filed and sworn to by attorneys-in-fact?

A. I will bring them over so you can know just how it was. This is 1898.

Q. 279. You stated that in fixing the value of the bank's assets for the purposes of taxation, you had the officers before you. Do I understand that some officer of every one of these twelve banks was before you in 1897?

A. If any discrepancy existed that we were not thoroughly aware what it meant, we called then in and had them explain.

Q. 280. There was a discrepancy in every bank between the comptroller's return and the return to you?

A. If there was, we had them all in. The way they did, they brought them in. Several of them were sworn to in our office. Mr. Wright and Mr. Forbes, who appear as notaries are in our office. They would come in and swear to them there, and make such explanation to Mr. Jones or to me as the case might be.

Q. 281. They were not sworn to when they explained?

A. No.

Q. 282. Will you explain to the court how it happens that you took into consideration the insolvency of the makers of the paper of bad debts in every one of the twelve banks? How is it that they have exactly the same ratio of bad debts?

A. I don't think that we worked that way. Some haven't as much deduction as others.

Q. 283. You were asked on re-examination if the returns you sent to the State board didn't amount to 60 per cent., or the amount they chose to return in the comptroller's return, and you said it was substantially that all the way through.

A. Yes.

Q. 284. Can you explain, if you took into consideration the unsworn testimony of the cashiers, how all the twelve banks had exactly the same amount to be deducted?

188 A. I cannot tell that year, but I have a statement we fixed this year. I see the weakness of the position. We depended more upon the statement made than on the written statement.

Q. 285. If the years 1896 and 1894 that the judge has called your attention to had been based upon false returns, and you sent them to the State auditor then these findings were based upon an erroneous state of facts, were they not?

A. If there was an erroneous statement, to us we would be in error.

Q. 286. So the custom was built up by the fact of their deducting these thousands of dollars before they handed you the returns?

A. We can get the reports and see. I don't think the custom of their making such discrepancies has existed into back years.

Q. 287. That custom of deducting for themselves a large amount, amounting to thousands of dollars, has been growing on the part of the banks till it has reached a condition that the entire twelve banks have deducted $6,272,000, including what they have asked you to deduct to equalize, amounting to upwards of $6,235,780, leaving but $6,036,220. Is that a fact?

A. That's the way it stands. These are the figures.

Q. 288. And that great discrepancy did not exist in past years as much as in 1897?

A. The records will show. I am aware from the investigation I made for taxation, and the facts that have come to me through different cashiers and representatives of the bank that their true condition was not as bad during 1890 and 1893 as that which exists at the present time. That they have said in confidence to me certain things that I am satisfied were true, and I satisfied myself the best I could before I was invited by certain banks to go to their books and see what they claimed. This year I required a statement of every bank to cover the point of last year that we hadn't a statement of. I think the difference that they made between the return for taxation and the comptroller's statement is a greater reduction this year than prior, because — the true state of facts that exists. The losses of the banks have been very large.

Q. 289. Do you mean that the effect of the panic in 1893 and 1894 did not leave more bad paper in their hands, than the prosperous year of 1897?

A. Our banks all suffered heavy blows last year. The Shipherd matter was a terrible blow.

189 Q. 290. And on your examination you found that every bank had exactly the same amount of insolvent paper?

A. No. I have a statement that will bear out what I did find for this year. Last year it was a very similar condition, and it worked out the same result.

Q. 291. You say the banks called your attention to the prior per cent. for former years that they had been assessed?

A. I said I didn't have to go into a careful examination of classes

of property to find how it was taxed, because the people themselves called our attention to it.

Q. 292. They wanted to remain at that 60 per cent.?

A. They probably thought they were taxed as high as the banks throughout the State.

Q. 293. You took 60 per cent., not of their actual face value, but 60 per cent. after they had made the deduction for bad paper?

A. They reported it as it was charged off.

Q. 294. Then you took an additional deduction?

A. I assessed it about the same percentage as formerly.

Q. 295. Didn't they try to offer you a horizontal reduction of 5 per cent. on their capital stock and surplus and undivided profits? Is not that Mr. Sullivan's theory?

A. 5 per cent. on their bills receivable—5 per cent. discount for bad debts.

Q. 296. That's the theory that they have gone on? This year they didn't point out the individual paper?

A. Some did and some didn't.

Q. 297. Where it didn't show on paper, they adopted the per-cent. rule? Is that th' way?

A. They have invariably claimed that some things were below par, and others were very bad and some not so bad, but that the average would make up that amount.

Q. 298. None of their testimony was sworn to?

A. No.

Q. 299. But the testimony to the Comptroller of the Currency, requiring to be accurately sworn to, you had, and it was different than they gave it?

A. Yes. I guess it was different. It differed just as it does when you assess the Cuyahoga block or the Society for Savings. We know it is not assessed for all it has cost.

Q. 300. And your real estate in West Cleveland is assessed for all it is worth?

A. No. The West Side was probably assessed high in 1890, and was reduced.

190 Q. 301. I mean outside of this illegal board.

A. There may be individual property that is assessed as high as it could be sold for. I think the valuation of the city is low, and real estate is assessed lower than it ought to be. I have always said that.

Q. 302. Do you have the custom here of a private party returning notes to the assessor, and the board of equalization on allowing them to go and make a reduction for bad paper?

A. If an individual comes and says he has $10,000 of paper, and that he is willing to dispose of it at $6,000, we will treat it as $6,000 worth of paper.

Q. 303. And then knock off 40 per cent. more of its true value in money?

A. I think it wouldn't be assessed at its true value. I think the value of different classes of properties has different per cents. I

have always avoided using any per cent. for anything in regard to property.

Q. 304. Isn't it a fact that your instructions to your taxing officers is to assess their property at the true value in money?

A. Yes, and then I explained to them the way true value in money was arrived at. There is as many different opinions in regard to that as there are people to try and explain it. I gave the instructions this year that it was money. A dollar is a dollar at its par value. I think the custom has grown from the people taking advantage and returning $600 for $1,000 and it being left alone; this has brought about a greater custom than the officers doing that for the people.

Q. 305. If such alleged custom exists, it has been the result of misstating on the part of the tax-payer?

A. The tax-payer has drawn conclusions and acted upon them, contrary to the knowledge of the officers, and the board of equalization has acquiesced in from 60 to 70 per cent. I have claimed for myself that I believe that when property was valued and the court would allow property to be sold under an appraisement, that the appraisement is allowed at two-thirds of that appraisement, it is fair to say, you get that amount for taxation.

Q. 306. Complying with the rule, and taking the return that these banks themselves make to the Comptroller of the Currency under oath, and take two-thirds of that as a tax basis, what has been the actual fact? Haven't they been undertaxed as compared with the entire twelve banks or any of them?

191 To which question plaintiff objected.

A. If it was appraised to what it was actually worth, I don't know how it would turn.

Q. 307. If the Federal Government under the Federal statute has asked these same plaintiff banks to report to the Comptroller of the Currency for the same month $12,272,000, and you have adopted the rule for other property to take two-thirds value, they themselves fix under oath to the Comptroller of the Currency, I will ask you whether that would not make them $8,000,000 where they are only on the tax duplicate for $6,036,000?

A. You take twelve manufacturers or twelve or more large buildings in the city, at their actual cost and their tax value, and the banks will stand very well in comparison with the other property if it is handled in the same way as you speak. You will find the banks will stand on a par with other classes of property that you may individualize out for the same amount of money. Take $12,000,000 of real estate at its cost value, and take its tax value, you will find the banks stand a higher per cent. of taxation.

Q. 308. I took the actual value as sworn to by the cashiers themselves, and you say courts will confirm a sale at two-thirds of that value?

A. No, I said that was a fair value.

Q. 309. You assume that they, going into a court of equity in the United States court in the same branch of the Government, when

they were reporting to the Comptroller of the Currency $12,000,000 of property and asking to be protected when they only reported $6,000,000, that that is fair?

A. I don't believe, you take the railroads or buildings or manufactories, that they will stand any better. I haven't been the whole thing here. I haven't been in existence only a few years. I follow customs.

Q. 310. You say you fix no per cent. of actual value. What do you mean by that?

A. I have done very much as the State board did, in one year possibly not doing as well as I think I will another year. If I could have my way—I have said so publicly since 1890—the values on the real and personal property here would certainly be under the law very much higher than they are now.

Q. 311. And come up with the rest of the State?

A. I don't know anything about the rest of the State. It has got to be a fact, everybody knows it. While I have known
192 that I have had boards of equalization that have had a good deal of authority and they have acted as they could.

Q. 312. Isn't it a fact that since 1897 the boards of equalization that are now outlawed have found this same property so much lower than they have listed, $100,000 the last two weeks?

To which question plaintiff objected.

A. That may be with a certain class of property. They haven't excited the world with any action yet.

Q. 313. Didn't the Brown Hoist Company have $41,000 and $31,000 at another time, and these corporations never winced to sign the report agreed on?

A. Only a little while ago I put on $100,000 on a concern that had only $20,000. That would surprise a man that has not been in the board of equalization.

Q. 314. The other corporations you have referred to have slipped in without your consent? There has been no custom established whereby you authorized that evasion?

A. No. I believe people are more to blame. They will shirk responsibility upon the officer in not coming after them. The people have misinterpreted the law and misunderstood the law. Some people are absolutely ignorant, and others try to be that I have to deal with, in tax matters.

Plaintiff objected to the answer.

Q. 315. The other banks that your attention was called to, didn't the State board raise them also?

A. I think they raised everything.

Q. 316. There was no discrimination as between the State and national banks under the action of the State law?

Objected to by plaintiff.

A. I don't know.

Q. 317. You may give the table to show what the State banks did?

To which question plaintiff objected on the grounds that it is utterly and totally irrelevant.

In answer to the foregoing question the witness furnished the stenographer the following two tables to be here copied and made a part of his testimony:

Auditor of State's office.

COLUMBUS, O., *Dec.* 6, 1897.

Auditor Cuyahoga county.

DEAR SIR: You are hereby notified that the State board of equalization of bank shares has finished its labors and has
193 fixed the valuation of the banks of your county as follows:

Name of bank.	Assessed by county auditor.	Action of State board added.	Deducted.	Am't as fixed by State b'd.
Broadway Sav. & Loan Co., Clev....	212,630	No change.	.....	212,630
Cleveland Sav. & Bkg. Co., " ...	24,780	5,000	.....	29,780
Chagrin Falls Bkg.Co.,Chagrin Falls.	12,950	1,500	.....	14,450
Cleveland Trust Co., Cleveland.....	324,720	30,000	.....	354,720
Cuyahoga Sav. & Bkg.Co.,Cleveland.	27,120	3,000	.....	30,120
Columbia Sav. & Loan Co., "	31,500	3,000	.....	34,500
Detroit Street " "	28,380	3,000	.....	31,380
Dime Sav. & Bkg. Co., "	172,730	39,000	.....	211,730
East End " "	113,820	38,000	.....	151,820
Euclid Ave. " "	114,540	6,500	.....	121,040
Forest City " "	37,630	15,000	.....	52,630
Garfield " "	30,000	3,500	.....	33,500
German Am. " "	27,470	2,500	.....	29,970
Guardian Trust Co., "	270,000	60,000	.....	330,000

The above is exclusive of real estate.

Respectfully,

W. D. GUILBERT,
Auditor of State.

Auditor of State's office.

COLUMBUS, O., ——, 189–.

Auditor — county.

DEAR SIR: You are hereby notified that the State board of equalization of bank shares has finished its labors and has fixed the valuation of the banks of your county as follows:

Name of bank.	Assessed by county auditor.	Action of State board added.	Deducted.	Am't as fixed by State b'd.
Lake Shore Bkg. & Sav. Co., Clev...	54,840	5,500	.....	60,340
Lorain St. " " ..	33,720	14,500	.....	48,220
Marine Bank Co., " ..	118,530	3,800	.....	122,330
Merchants' Bkg. & Sotr. Co., " ..	75,900	No change.	.....	75,900
Pearl St. Sav. & Loan Co., " ..	28,740	12,000	.....	40,740
Produce Exc. Bkg. Co., " ..	52,740	6,500	.....	59,240
South Clev. " " ..	83,380	7,900	.....	91,280
United Bkg. & Sav. Co., " ..	53,270	No change.	.....	53,270
Wade Park " " ..	51,240	"	.....	51,240
West Cleveland Bkg. Co., " ..	15,550	7,000	.....	24,550
Wick Bkg. & Trust Co., " ..	147,600	4,800	.....	152,400
Woodland Ave. Sav. & Loan " ..	176,100	No change.	.....	176,100

The above is exclusive of real estate.

Respectfully,

W. D. GUILBERT,
Auditor of State.

Q. 318. Is there any discrimination in this city between the national and private banks, by the State officers that you know of?

To which question plaintiff objected.

194 A. I don't know.

Q. 319. Do the private banks make their own deductions before they report to you?

A. They do not have to make any report. They have no comptroller's report to be governed by, therefore we know nothing.

It is admitted by the parties hereto that the following items, which are introduced in evidence in connection with the testimony of Albert E. Akins, are taken from the report of the Comptroller of the Currency for 1897, vol. 1397. No. 59. Loans and discount, capital stock, surplus and other undivided profits, and circulation of national banks, on October 5, 1897.

Loans and discounts total country banks, Ohio, $66,570,637.93.

Page 396 of same volume.

Loans and discounts total central reserve cities:

Cincinnati..... ..... 23,778,025.25
Cleveland 28,471,475.47

Page 761 of same volume.

Summary, by States, of the number of national banks, the important items of resources and liabilities, and the total resources, in thousands of dollars, as shown by latest returns in each annual report to Congress, from 1863 to 1897, inclusive.

Page 773 of same volume.

Ohio, 1897 118,820

Under date of August 18th, 1898, at 9 o'clock a. m., ALBERT E. AKINS, a witness heretofore produced in behalf of said complainant and heretofore duly sworn, deposes and says further as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. Have you brought in this morning the affidavits that were made by the various shareholders, claiming deductions of debts from the assessed value of their bank shares?

A. I have.

Q. 2. Do you now present them?

A. These are the ones that were presented by the Mercantile national bank (handing counsel a roll of paper-writing.)

195 Q. 3. This is for the year 1897?

A. Yes.

Q. 4. Presented by whom?

A. By the cashier when he made their returns to me for the year 1897.

Q. 5. I put into your hands a letter bearing date December 7, 1897, purporting to be addressed to the cashier of the Mercantile national bank. You may state by whom it was written and sent to the bank? (Said letter is marked for identification "Akin Exhibit B 2.")

A. It is a letter from the auditor, myself as auditor. It does not bear my own handwriting or signature, but it bears the signature of my deputy. He placed my signature there by my order. I ordered the letters sent out to the banks.

Q. 6. Of this date?

A. Yes, December 7, 1897.

Q. 7. I understand you, you sent a similar letter to each of the other national banks?

A. Yes, all the same, with the different bank's name, and with the amounts of their various assessments. It was a matter of information sent to the banks.

Q. 8. Do you have in mind the rate of taxation for the State, county and city for the year 1897?

A. The total award was 2.93 on the 100 value.

Q. 9. About what do you recall the State portion of that?

A. I think it is 44 cents on the dollar, I mean taking this as 2.93 on 100 of value, 44 cents of that as I remember is the State tax. It may be 32 cents, I don't know.

Q. 10. You must be very wrong?

A. No, I cannot be very wrong.

Q. 11. You may state whether or not the papers I put into your hand now are the affidavits filed with you by the cashier of the Union national bank for the year 1897, purporting to give the debts of the stockholders of that bank claiming deduction?

A. These are not attached, but there is a rubber band around them, unless they have been unfolded. The others are attached. I

would say that was all that was filed, and they are the ones that were filed.

Q. 12. I put into your hands a similar package of papers for the First National Bank of Cleveland. You may state whether these are the affidavits filed with you by the cashier of that bank on behalf of the shareholders claiming deductions from the value of the bank shares?

A. Yes, these are the ones.

196 Q. 13. You may state whether these are the affidavits of the shareholders of the Cleveland national bank (handing witness another package of papers).

A. Yes, these are. The only chance for me to make an error is, we put these up this way and fasten them when we get them. It is barely possible in this box you will find some more of the Cleveland national that came afterward. These were handed to us by the Cleveland National Bank cashier.

Q. 14. I put into your hands affidavits filed with you by the cashier of the Central National Bank of the City of Cleveland?

A. Yes, these are the ones.

Q. 15. You may state whether the affidavits I now put into your hands are those filed by the cashier of the Park national bank for 1897?

A. Yes, they are the ones.

Q. 16. You may state whether the affidavits I now put into your hands are those filed by the cashier of the Commercial national bank.

A. Yes, they are the ones that were filed.

Q. 17. You may state whether the affidavits I now put into your hands are those filed by the cashier of the Euclid Avenue national bank for 1897.

A. They are the ones.

Q. 18. You may state whether the affidavits I now put into your hands are those filed by the cashier of the State national bank for 1897.

A. Yes, they are the affidavits.

Q. 19. You may state whether the affidavits I now put into your hands are those filed by the cashier of the National City bank for 1897.

A. They are the ones filed by the National City bank.

Q. 20. You may state whether the affidavits I now put into your hands are those filed by the cashier of the National Bank of Commerce for 1897.

A. Yes, they are the ones filed at that time.

Q. 21. You may state whether the affidavits I now put into your hands are those filed by the cashier of the Western Reserve national bank for 1897.

A. Yes, that is correct. They are the ones filed.

Q. 22. You may state whether the returns made by the cashier of the Mercantile national bank for the year 1897 contained a list of the names of their stockholders.

To which question defendant objected.

A. They did, as I remember, and the record will show.

Q. 23. You may state whether what I now hand you is the record of the return itself.

197 A. Yes, here is the return of the Mercantile national bank sworn to on page 13 of the Bank-book Returns for 1897.

Q. 24. Is that the return that the cashier of the bank for the year 1897 made to you?

A. It is.

Q. 25. Does it contain a list of the stockholders?

A. It contains a list of stockholders written together with the number of shares and their residence.

Q. 26. Will you turn in your record to the return made by the Central national bank?

A. It is on page 3 of this book called Bank Returns for 1897.

Q. 27. The paper there attached is the return made by the cashier of that bank for 1897?

A. Yes, this is the cashier's return.

Q. 28. Turn to the next.

A. The next is the Cleveland national bank, on page 5 of this same record, containing the returns with the names of the stockholders.

Q. 29. Give the next.

A. The next is the Commercial national bank, on page 7 of this same book, return with the stockholders' names attached.

Q. 30. Give the next.

A. Euclid Avenue national bank, page 9 of this same book, containing the return of the cashier for the bank with the names of the stockholders attached.

Q. 31. Give the next.

A. The First national bank, on page 11 of this same book, containing the return of the cashier for that bank with the names of the stockholders attached.

Q. 32. Give the next.

A. Page 13 of this same book, the Mercantile national bank, return of the cashier with the names of the stockholders attached.

Q. 33. Give the next.

A. Page 15 of this same book, the National Bank of Commerce, return made by the cashier of the bank with the names of the stockholders attached.

Q. 34. Give the next.

A. Page 17, National City bank, return of the cashier with the names of the stockholders attached.

Q. 35. Give the next.

A. Page 19, Park national bank, return of the cashier with the names of the stockholders attached.

Q. 36. Next.

A. Page 21, State national bank, return of the cashier with the names of the stockholders attached.

198 Q. 37. Next.

A. Page 23, Union national bank, return made by the cashier with the names of the stockholders attached.

Q. 38. Next.

A. Page 25, Western Reserve national bank, return made by the cashier with the names of the stockholders attached.

Q. 39. You may state if each of these returns purport to give you the resources and liabilities of the banks with the names and places of residence of the stockholders of the banks.

To which question defendant objected.

A. That's the purport of the return.

Q. 40. I will ask you whether or not you requested any other information from them than what is given on the blanks, or did they give you such information as the blanks required of them.

To which question defendant objected.

A. Yes, they gave other information verbally. They came before me in addition to this.

Q. 41. Have you any reason to believe that the name of any stockholder of any bank was omitted from the return?

To which question defendant objected.

A. I haven't any reason to believe it.

Q. 42. The report of the auditor of State is made up of returns of the various auditors from the State. Do you know whether that is so or not?

A. Yes, we got the report of the auditor of State made up from the reports made to him from the auditors throughout the State.

Q. 43. You may state whether or not a printed report to the auditor of State for each year is sent out throughout the State as containing a true statement of the taxable valuations fixed on property throughout the State?

To which question defendant objected.

A. We get a copy of it and I suppose it is sent to other parts of the State, purporting to be an abstract of the personal property as certified to from the counties to the State auditor. I never checked our counties down to see if it is right.

Q. 44. You may state whether or not the affidavits you have stated were furnished to you by the cashiers of the several banks are in the form of affidavits that have been used for a number of years in the county of Cuyahoga.

To which question defendant objected.

199 A. We had a form here yesterday that I said was the form. I drew the conclusion, thinking that they were all alike. I think that is so, but I notice in different banks there are different sizes of copies used, or different printing. I would have to read one with the other to be sure that they are all the same. I think, without a question, they are all the same.

Defendant objected to the answer and moved the court to order the same stricken from the record.

Cross-examination of ALBERT E. AKINS.

By Mr. BENNETT:

Q. 45. Mr. Auditor, have you the blank form that is sent by the State auditor to you as a form for the purpose of you giving the same to the national banks of your city and having them make return for taxation upon the same?

A. I have a form before me that has been filled out by them. That was a blank before it was filled out. I have none that has not been filled.

Q. 46. Can you furnish an extra blank form of the kind that has been in use for years by yourself and your predecessor, and especially during the year 1897, upon which national banks are directed to make their returns to you for taxation?

A. I will try and get one. I think we have one of 1898, which is the same as 1897.

Q. 47. If you can get one similar to the kind that the returns were made upon in the year 1897 by national banks, will you hand it to the stenographer and have her mark it "Akin Exhibit C" and make it part of your testimony?

To which question plaintiff objected on the grounds that there is no statute of the State requiring banks or any other owner of property to list it on a form such as constitutes "Akin Exhibit C."

A. I will see if I can get one.

Said blank marked for identification "Akins' Exhibit C," is hereto attached as an exhibit and made a part of the testimony of this witness.

Q. 48. Have you in your office a full and accurate list of the names and residences of the stockholders in each of the several plaintiff banks, showing the number of shares held by each and the residences and addresses of the several stockholders for the year 1897?

A. Yes, I have in every case of a return of a bank attached to that a list of the stockholders, but not in every case the residence carried out. In most cases they are, but in a few they are not.

Q. 49. You cannot testify of your own knowledge that each
200 stockholder has been truthfully reported by the cashier making his returns to you, nor can you testify that the number of shares affixed to their names, respectively, are the true number of shares held by such stockholder, can you?

A. No, I don't know that those things are so, only as they are sworn to and attached to the return.

Q. 50. You can only say with regard to these lists of stockholders and the number of shares affixed to each name that the same has been returned to you by the cashier; but personally you cannot say

whether their names and their number and shares have been truthfully affixed thereto or not?

A. No. I take it for granted it is right. That is all.

Q. 51. You have no other evidence of any stockholders in any of the several plaintiff banks, outside of the *ex parte* statements or affidavits made up by the cashiers of the several banks?

A. I have nothing.

Q. 52. Do the returns as testified to by you, and contained in the book called Bank Returns for 1897, now lying before you, show the reports, changes and alterations made in such returns by the State board of equalization of bank values?

To which question plaintiff objected.

A. No, these do not go to the State. These stay with us. They are copies. The originals don't go. We send duplicates.

Q. 53. So what you have been testifying from being the original returns made by the cashiers of the several plaintiff banks to yourself as county auditor does not show the amounts agreed upon by the State board of equalization as the amounts which the several banks should be assessed at for the purpose of taxation?

A. They show no corrections.

Q. 54. So then they don't show the amounts against which the said several plaintiffs are complaining in this action, but they do show the amounts prior to the alterations as made in them by the State board of equalization?

A. You are correct.

Q. 55. You know nothing with regard to whether or not the matters set forth in the affidavits to which you have testified as having been filed, nor the affidavits by the various cashiers of the national banks of this city, as to whether they are true or not true, outside of the affidavits themselves?

201 A. That's the only information we have, excepting statements made verbally to us of the reasons why they were not as the comptroller's statement.

Q. 56. And these affidavits were filed with you and these statements made to you prior to the final action of the board of equalization for bank values which was subsequently made, after these affidavits were filed with you. Is that not true?

A. Yes, these statements made were made at the same time of the return being filed or immediately thereafter, before certifying our action to the State board.

Q. 57. Can you give of your own knowledge the name of the stockholders in the various plaintiff banks who are known residents of the State of Ohio?

A. No.

Q. 58. You have no personal information of that whatsoever, have you?

A. No.

Q. 59. The letter which was handed to you and identified by you as a letter that emanated from your office, and was directed to each

of the national banks of the city, was not a letter coming to you from the auditor of State or the State board of equalization?

A. No, it was based upon a letter that I received. I think I received a letter with the statement.

Q. 60. When you say that this letter of December 7th, 1897, which has not been introduced in evidence, was based upon a letter sent to you by the auditor of State, you merely mean to say that the amount contained in that letter is all that is in that letter that was copied from the letter of the auditor of State to you, do you not?

To which question plaintiff objected, on the ground that the letter speaks for itself.

A. Yes. I don't have the letter in my office that accompanied these reports. I may have one and I may not, that explains.

Q. 61. What precedes and what succeeds the statement of the amounts contained in the letter referred to is merely your own wording or direction or order given you by the auditor of State or the State board of equalization for bank values?

A. Yes, I sent out these letters of my own volition, giving the amounts certified to us.

Plaintiff at this point introduced in evidence said letter marked for identification "Akins' Exhibit B 2," to which defendant objected.

Said letter is in the words and figures following, to wit:

202 "AIKNS EXHIBIT B 2."

Cuyahoga county auditor's office.

A. E. Akins, auditor. O. L. Jones, deputy.

CLEVELAND, O., *Dec. 7th*, 1897.

To the cashier of Mercantile bank.

DEAR SIR: After much delay on the part of the State board of equalization, I am just notified of the action upon the banks' return as made by me to the State auditor, as a return for taxation for the year 1897 duplicate.

The amount returned by this office amounted to.....	$519,320
The amount added by the State board	123,000
Making a total for the duplicate of	$642,320

This action comes with some surprise to this office, and I presume will cause the same with the banks. I had been told by the State auditor, personally, that he thought that we had placed a very low percentage upon the banks for the year 1897. Further than that I had received no knowledge of the intended action of the State board.

Very truly yours,

A. E. AKINS,
County Auditor.

Defendant objected to the introduction of the foregoing letter "Akins Exhibit B 2," and now moves the court to have the same stricken from the record for the reason that section 2810 of the Revised Statutes of Ohio provides that the action of the State board shall be certified to the various county auditors, and each valuation shall be put upon the proper tax-list and no authority or direction is given to the auditor to issue any statement to any of the banks in question.

Form 32—1000.

Forms for bank statements, in duplicate, under provisions of sections 2762, 2763, 2764, 2765, 2766, 2767, 2768, and 2769 and amended sections 2766, 2808, 2809, 2810, Revised Statutes of Ohio. See O. L., vol. 80, pp. 54 and 55.

203 *Banks or Banking Associations Organized under the Laws of the State of Ohio or of the United States.*

To the cashier of the — bank, ——, Ohio.

SIR: You are hereby required to make out upon the forms herewith, and return to me at my office, at ——, in the county of ——, Ohio, on or before the second Monday of May, A. D. 189–, a report in duplicate, under oath, exhibiting in detail the resources and liabilities of the above bank or banking association, at the close of business on the first Wednesday after the first Monday of May preceding such report, together with a full statement of the names and residences of stockholders therein, with the number of shares held by each, and the par value of each share. You are also required to accompany this return with a copy of the report of the Comptroller of the Currency, made next prior to the second Monday of May, 189–.

Dated —— —, 189–.

——— ———,
Auditor of —— County, Ohio.

Resources.

Loans and discounts.....
Overdrafts.....
U. S. bonds to secure circulation.....
U. S. bonds to secure deposits.....
U. S. bonds on hand.....
Other stocks, bonds and mortgages.....
Due from approved reserve agents.....
Due from other banks and bankers.....
Real estate, furniture and fixtures.....
Current expenses and taxes paid.....
Premiums paid.....
Checks and other cash items.....
Exchanges for clearing-house.....
Bills of other banks.....

Fractional currency.....
Specie.....
Legal-tender notes.....
U. S. certificates of deposit.....
Due from U. S. Treasurer.....

204 AKINS EXHIBIT C.

Total.....

Liabilities.

Capital stock paid in.....
Surplus fund.....
Other undivided profits.....
National bank notes outstanding.....
State bank notes outstanding.....
Dividends unpaid.....
Individual deposits.....
United States deposits.....
Deposits of U. S. disbursing officers.....
Due to other national banks.....
Due to State banks and bankers.....
Notes and bills rediscounted.....
Bills payable.....

Total.....

The par value of each share of the stock of this bank is — dollars, and the appraised value (for taxation) of the real estate owned by the bank is — dollars. See affidavit upon third page of this report.

—— ——, *Cashier.*

Names of stockholders.	Residences.	No. of shares.
Amount carried forward.....		

Statement—Continued.

Names of stockholders.	Residences.	No. of shares.
Amount brought forward.....		
Total number of shares.....		

Affidavit.

THE STATE OF OHIO, }
—— *County,* } *ss:*

205 I, —— ——, cashier of — bank of ——, Ohio, do solemnly swear that the foregoing is a correct statement of the resources and liabilities, of the names and residences of the

stockholders, of the number of shares held by each, of the par value of the shares of said bank at the close of business on the first Wednesday after the first Monday of May, 189–.

—— ——, *Cashier.*

Sworn and subscribed to before me, a — in and for said county, this — day of —— 189–.

—— ——.

(In duplicate.)

Office of the auditor of —— county.

——, OHIO, ——, 189–.

To the State board of equalization for incorporated banks:

I hereby certify that I have fixed the value of the shares of — Bank of —— for the year 189–, as follows:

— shares of par value of $—..... $
From which is to be deducted the value of the real estate owned by said bank which stands upon the duplicate at..

Leaving taxable valuation of shares at..... $

—— ——,
Auditor —— County, Ohio.

This return to be made to the auditor of State for the use of the State board of equalization of incorporated banks on or before the 10th day of June.

Annual statement of the — Bank of ——, —— county, Ohio. —. Received at the county auditor's office, —— 189–.

Thereupon, in connection with the testimony of the foregoing witness, Albert E. Akins, plaintiff introduced in evidence the return made to the county auditor in the year 1897 of the Mercantile national bank, which was testified to as having been made to said auditor by the cashier of the Mercantile national bank for the year 1897.

206 To which defendant objected for the reason that the same does not contain the statement of change made in said return, by the State board of equalization, and does not contain the amounts as amended by said State board of equalization and contained in the complaint of plaintiff herein.

Said return is in the words and figures following, to wit:

Form 32—1000.

Forms for bank statements, in duplicate, under provisions of sections 2762, 2763, 2764, 2765, 2766, 2767, 2768, and 2769, and amended sections 2766, 2808, 2809, 2810, Revised Statutes of Ohio. See O. L., vol. 80, pp. 54 and 55.

Banks or Banking Associations Organized under the Laws of the State of Ohio or of the United States.

To the cashier of the Mercantile national bank, —— Ohio.

SIR: You are hereby required to make out upon the forms herewith, and return to me at my office, at Cleveland, in the county of Cuyahoga, Ohio, on or before the second Monday of May, A. D. 189–, a report in duplicate, under oath, exhibiting in detail the resources and liabilities of the above bank or banking association, at the close of business on the first Wednesday after the first Monday of May preceding such report, together with a full statement of the names and residences of stockholders therein, with the number of shares held by each, and the par value of each share. You are also required to accompany this return with a copy of the report of the Comptroller of the Currency, made next prior to the second Monday of May, 189–.

Dated May, 1897.

A. E. AKINS,
Auditor of Cuyahoga County, Ohio.

Resources.

Loans and discounts	$2,126,165	74
Overdrafts	1,683	73
U. S. bonds to secure circulation	470,000	
U. S. bonds to secure deposits		
U. S. bonds on hand		
Other stocks, bonds and mortgages	51,500	
207 Due from approved reserve agents	172,914	94
Due from other banks and bankers	136,773	89
Real estate, furniture and fixtures	300,000	
Current expenses and taxes paid	9,328	52
Premiums paid	18,000	
Checks and other cash items	2,405	62
Exchanges for clearing-house	17,188	59
Bills of other banks	34,938	
Fractional currency	332	13
Specie	344,700	
Legal-tender notes	30,000	
U. S. certificates of deposit		
Due from U. S. Treasurer	21,150	
Total	$3,737,081	16

Liabilities.

Capital stock paid in	$1,000,000	
Surplus fund		
Other undivided profits	174,541	49
National bank notes outstanding	355,900	
State bank notes outstanding		
Dividends unpaid	15,099	
Individual deposits	1,839,669	42
United States deposits		
Deposits of U. S. disbursing officers		
Due to other national banks	45,016	01
Due to State banks and bankers	6,855	24
Notes and bills rediscounted		
Bills payable		
U. S. bond acc't	300,000	
Total	$3,737,081	16

The par value of each share of the stock of this bank is one hundred dollars, and the appraised value (for taxation) of the real estate owned by the bank is $117,370. See affidavit upon third page of this report.

CHAS. L. MURFEY, *Cashier.*

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Names of stockholders.	Residences.	No. of shares.
Amount carried forward		
Name of stockholders.	Residences.	No. of shares.
Annin, Mrs. Hattie M.,	Marseilles, Ind	39
Akers, W. J.,	Cleveland	25
Akers, Miss Mattie,	Cleveland	25
Armstrong, Mary E., trustee,	Cleveland	50
Bingham, Wm.,	Cleveland	150
Bingham, Mrs. Mary P.,	Cleveland	300
Bingham, Cassie F.,	Cleveland	50
Barnett, James S.,	Cleveland	400
Beckwith, Mrs. Sarah E.,	Cleveland	100
Benedict, Mrs. Sarah K.,	Cleveland	45
Benedict, Mrs. Clara W.		7
Backus, Mrs. Lucy M.,	Cleveland	225
Baldwin, E. F.,	New York	25
Baldwin, Irving,	New York	25
Baldwin, S. Prentiss,	Cleveland	53
Baldwin, Mrs. Caroline P.		24
Bliss, Stoughton, estate of,	Cleveland	100
Childs, Edward H.,	Cleveland	55
Cleveland, J. D., in trust,	Cleveland	25
Cleveland, J. D., in trust,	Cleveland	25

	Coit, Mrs. E. J. W., Concord, N. H.	37
	Collins, Mrs. Jane K., Cambridgeport, Mass.	35
	Cole, Mrs. Alice K., Cleveland	150
	Cole, Newcomb B., Cleveland	50
	Crowell, Mrs. Annie C., Cleveland	120
	Corner, Horace B., Cleveland	20
	Cutler, Mrs. C. A. P., Cleveland	50
	Chamberlain, Joseph P., Santa Barbara, Cal	100
	Chamberlain, Selah, Santa Barbara, Cal	100
	Dagleish, R. T., Cleveland	10
	Foot, Agnes B., Cleveland	15
	Ford, S. O., Cleveland	35
	Gardner, Geo. W., Cleveland	103
	Gordon, W. J., estate of, Cleveland	200
	Goodrich, Mrs. M. P., New Haven, Conn	
	Goldsmith, Joseph Feiss & Co., Cleveland	40
	Hamilton, Mary E., Cleveland	200
	Handy, T. P., Cleveland	50
	Hawley, R. K., New York	400
	Hawley, Mrs. Virginia F., New York	50
	Harkness, Chas. W., New York	50
209	Howe, Geo. W., Cleveland	14
	Howe, Geo. W., trustee, Cleveland	25
	Howe, Mrs. Kate L., Cleveland	63
	Hines, J. N., estate, Cleveland	32
	Hitchcock, Sarah W., Cleveland	63
	Isom, E. S., Cleveland	50
	Claflen, Margaret R., Boston, Mass.	100
	Johnson, F. C., Cleveland	12
	Jones, Orville L., Cleveland	10
	Kyle, Mrs. Louisa J., Cleveland	62
	Levy, Isaac, Cleveland	20
	Lynch, Frank, estate, Cleveland	40
	Leffingwell, Lucy A., Cleveland	100
	Mather, S. L., estate of, Cleveland	50
	Mather, Samuel, Cleveland	215
	Mather, S. H., estate of, Cleveland	18
	Mather, Mrs. Flora S., Cleveland	50
	Mather, Wm. G., Cleveland	280
	Mather, Kate L., Cleveland	70
	Mather, Mrs. E. L., Cleveland	50
	McKean, N. P., Cleveland	85
	Murfey, Mrs. J. A., Cleveland	50
	Murfey, Chas. L., Cleveland	73
	Murfey, L. A., Cleveland	65
	Otis, Mrs. Laura L., Cleveland	40
	Painter, J. V., Cleveland	160
	Perkins, E. R., Willoughby	400
	Perkins, trustee Chamberlain estate, Willoughby	530, 10
	Perkins, Mrs. Harriet P., Willoughby	1,196
	Perkins, Mary W., Willoughby	5

	Pierce, Mrs. M. A., Cleveland	5
	Prentice, Mrs. G. A., Cleveland	35
	Price, W. A., Cleveland	100
	Rainey, W. J., Cleveland	100
	Ranney, H. C., Cleveland	200
	Ranney, Chas. P., Cleveland	25
	Ranney, John R., Cleveland	33, 33
	Ranney, Mrs. A. W., Cleveland	34
	Rees, W. D., Cleveland	100
	Root, Mrs. Lizzie H., Manchester, N. H	26
	Root, Orville H., Cleveland	12
	Rust, Jno. F., Cleveland	100
	Sanders, W. B., Cleveland	16
	Sawyer, Mrs. Mary B., Cleveland	23
	Spencer, P. M., Cleveland	50
	Sherman, John, Mansfield	100
	Sherman, Mrs. Sarah R., Cleveland	5
210	Smith, Reuben F., Cleveland	96
	Smith, Reuben F., trustee "B.," Cleveland	24
	Smith, John B., estate of, Cleveland	100
	Scott, Chas. O., Cleveland	100
	Stone, Ithiel, Cleveland	100
	Stearn, A., Cleveland	40
	Severance, L. H., Cleveland	1
	Tyler, W. S., Cleveland	260
	Tyler, Mrs. Marion C., Cleveland	46
	Upson, A. S., Cleveland	25
	Vincent, Jno. A., estate, Cleveland	150
	Waite, Mrs. Fanny P., Cleveland	50
	Williamson, Sam'l E., Cleveland	100
	Winslow, Lucy B., Cleveland	30
	Withington, A. L., Cleveland	30
	Wade, J. H., estate of, Cleveland	200
	Yates, Mrs. Antoinette B	50
		10,000

Statement of Real Estate Owned by the Mercantile National Bank.

Listed on the tax duplicate of Cuyahoga county and properly deductable from the bank's return for taxation for the year 1897.

Name on duplicate.	Location.	Lot, feet front.	Street.	Tax value.
				Dollars.
Mercantile nat'l bk.....	Cleveland....	212 20	Sycamore..... ..	1,050
"	"	213 20	"	870
"	"	214 16	"	450
"	"	215 20	"	300
"	"	216 20	"	140
"	"	217 12	"	60
"	"	H 231	West River	16,540
"	"	22-9	Superior	34,420
"	"	22	Bank	17,240
"	"	19	"	15,360
"	"	22-7	Superior	30,940
				117,370

Statement Continued.

Names of stockholders.	Residences.	No. of shares.
Amount brought forward.....		
Total number of shares.....		

Affidavit.

THE STATE OF OHIO, }
Cuyahoga County, } ss:

I, Chas. L. Murfey, cashier of the Mercantile National Bank, of Cleveland, Ohio, do solemnly swear that the foregoing is a
211 correct statement of the resources and liabilities, of the names and residences of the stockholders, of the number of shares held by each of the par value of the shares of said bank at the close of business on the first Wednesday after the first Monday of May, 189–.

CHAS. L. MURFEY, *Cashier.*

Sworn and subscribed to before me a notary public in and for said county, this 8 day of June, 1897.

ALBERT STRAUS,
Notary Public.

(In duplicate.)

Office of the auditor of Cuyahoga county.

CLEVELAND, OHIO, *July* 19, 1897.

To the State board of equalization for incorporated banks:

I hereby certify that I have fixed the value of the shares of Mercantile National Bank of Cleveland for the year 189–, as follows:

10,000 shares of par value of $100..... $636,690
From which is to be deducted the value of the real estate owned by said bank which stands upon the duplicate at..... 117,370

Leaving taxable valuation of shares at..... ..$519,320

A. E. AKINS,
Auditor Cuyahoga County, Ohio.

This return to be made to the auditor of State for the use of the State board of equalization of incorporated banks on or before the 10th day of June.

Annual statement of the Mercantile National Bank of Cleveland, Cuyahoga county, Ohio. Received at the county auditor's office, Jan. 15, 1897.

JOHN VAN NOSTRAND, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. You may state your name and occupation.

212 A. John Van Nostrand, deputy clerk of the United States circuit court of the northern district of Ohio, eastern division.

Q. 2. You may state whether the record book No. 14, chancery records, is the chancery record of cases decided by the circuit court of the United States for the northern district of Ohio?

To which question defendant objected.

A. It is. It contains the final record of cases.

Q. 3. You may state whether it is the final record book of the court?

To which question defendant objected.

A. Yes.

Q. 4. You may state whether the record book No. 15, chancery records, is the chancery record of cases decided by the circuit court of the United States for the northern district of Ohio.

To which question defendant objected.

A. It is. It contains the final record of cases.

Q. 5. You may state whether it is the final record book of the court.

To which question defendant objected.

A. Yes.

Q. 6. You may state whether the record book No. 16, chancery records, is the chancery record of cases decided by the circuit court of the United States for the northern district of Ohio.

To which question defendant objected.

A. It is. It contains the final record of cases.

Q. 7. You may state whether it is the final record book of the court?

To which question defendant objected.

A. Yes.

Q. 8. You may state whether the record book No. 17, chancery records is the chancery record of cases decided by the circuit court of the United States for the northern district of Ohio.

To which question defendant objected.

A. It is. It contains the final record of cases.

Q. 9. You may state whether it is the final record book of the court.

To which question defendant objected.

A. Yes.

Q. 10. You may state whether the record book No. 20, chancery records, is the chancery record of cases decided by the circuit court of the United States for the northern district of Ohio?

213 To which question defendant objected.

A. It is. It contains the final record of cases.

Q. 11. You may state whether it is the final record book of the court?

To which question defendant objected.

A. Yes.

Q. 12. They are the books of the final records of the court of chancery of the circuit court of United States for the northern district of Ohio, eastern division?

To which question defendant objected.

A. They are.

Q. 13. Now in the possession of the clerk of the court as such records?

To which question defendant objected.

A. Yes.

Thereupon, plaintiff offered in evidence the record in the case of The Mercantile National Bank of Cleveland *vs.* Horatio N. Whitbeck, treasurer of Cuyahoga county, Ohio, found in chancery record, No. 14, U. S. circuit court, northern district of Ohio, eastern division, pages 624 to 643, inclusive. Said record is in the words and figures following, to wit:

To which defendant objected.

October Term, 1886.

No. 4411.

At a stated term of the circuit court of the United States for the eastern division of the northern district of Ohio, begun and held in the city of Cleveland in said district on the first Tuesday in October, being the fifth day of said month in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and tenth.

Present, the Honorable Howell E. Jackson, circuit judge, and the Honorable Martin Welker, district judge.

In the record and proceedings of said court then and there held among other things appeared the following, to wit:

214 THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio.

Bill.

Be it remembered that heretofore, to wit, on the 17th day of December, A. D. 1885, there was filed in the clerk's office of said court the following bill of complaint in the above-entitled cause, which bill is in the words and figures, to wit:

In the Circuit Court of the United States of America within and for the Northern District of Ohio, Eastern Division, *ss:*

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
HENRY N. WHITBECK, Treasurer of Cuyahoga County, Ohio, Defendant.
} Bill.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

Your orator, The Mercantile National Bank of Cleveland, Ohio, respectfully represents that it is a national banking association incorporated under and by virtue of the act of Congress entitled, "An act to provide for a national currency secured by the pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864, and the amendments thereof, and is established and doing business in the city of Cleveland in said northern district of Ohio, and brings this, its bill of complaint against Henry N. Whitbeck, treasurer of Cuyahoga county, Ohio, a resident of said city of Cleveland, Ohio, and a citizen of Ohio, and of said northern district, eastern division; and the grievance herein complained of arises and is exclusively founded on a violation by the defendant and others, whose unlawful acts
215 he is carrying into effect, of rights of the shareholders of said national bank, accorded them by section 5219 of the

Revised Statutes of the United States, secured to said shareholders a restriction upon the taxation of the shares of stock of said bank by State authority, to that rate and limit assessed upon other moneyed capital in the hands of individual citizens of the State, as will herein fully appear. And thereupon, your orator complains and says that it has a capital stock of $1,000,000 *dollars* divided into ten thousand shares of one hundred dollars each, all of which is paid up, and certificates for the shares outstanding and owned by a large number of persons, some of whom are now residents of the said State of Ohio and citizens of other States; that, in accordance with section 2765 of the Revised Statutes of the State of Ohio, then in force, the cashier of your orator duly reported, in duplicate, to the auditor of said county, the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday in May, 1885, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share, as required by said section 2765; that, included in said return so made by said cashier, was the real estate owned by your orator at a valuation of $163,060.00, which was already valued and equalized in conjunction with all the other real estate in the city of Cleveland by the proper board of equalization at a taxable value of $163,060.00, which tax on said real estate so valued in said return at the sum of $163,060.00, being the sum paid by said bank therefor—is otherwise and separately assessed and charged on the tax duplicate of said county, and paid by this complainant to the treasurer of the said county aside from the taxes set forth in this bill; that, thereupon, the said auditor pretended to proceed as required by section 2766 of the Revised Statutes of Ohio, as amended March 9th, 1883, to fix the total value of such shares according to their true value in money and fixed the same at $444,820.00, exclusive of the assessed value of its real estate; and made out and transmitted to the annual State board of equalization for incorporated banks a copy of the report so made by said cashier, together with the valuation of such shares as so fixed by said auditor; and your orator, from information and belief, alleges that the said county auditor, for the purpose of more accurately determining and fixing the value of said shares, did meet with and consult the board of equalization for the city
216 of Cleveland and the valuation by him reported to the State board of equalization was fixed and determined upon by said auditor with the assistance and approval of said city board of equalization, that it is by law, the duty of said city board of equalization to value and equalize for taxation all moneyed capital and personal property of every kind in the hands of individual citizens of the State of Ohio, resident in said city, except only the capital, assets and shares of incorporated banks, that being the only property under the statute aforesaid referred to said State board of equalization to be equalized; that said auditor placed a value upon said shares which was, in fact, and was known by him to be far in excess of the value fixed in said county on other moneyed capital in the hands of individual citizens of the State of Ohio, and of said city

and county; that the said State board of equalization assuming and pretending to comply with the requirements of section- 2808 and 2809 of the said Revised Statutes as amended March 9th, 1883, did examine the return aforesaid made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor; but that said State board of equalization did not examine as required by law, any other returns made by said county auditor to the State auditor, and the said board did then pretend to equalize said shares to their true value in money, and fixed the valuation thereof at $495,774.76, exclusive of the assessed value of its real estate; that said State board of equalization, so called, knowingly and designedly did fix a much higher per cent. of value and assessment for taxation upon the capital stock and shares of your orator than upon the capital and shares of other banks organized and existing under the laws of the State of Ohio, and which they pretended to equalize, a much higher rate and per cent. than was assessed upon other moneyed capital in the hands of citizens of the State of Ohio and much higher than that fixed upon other moneyed capital in the hands of such citizens in the said county of Cuyahoga and city of Cleveland. That about four-fifths of the taxes assessed in said city of Cleveland and upon the stockholders of your orator upon their shares, in said bank, are assessed and paid for the purposes and are of the said city of Cleveland, and about one-tenth for the purposes and are of the said county of Cuyahoga, and only about one-tenth for the purposes and are of the State of Ohio; that said State board of equalization did not equalize the value of said shares with the value of shares in other banks or with the value of other moneyed capital in the hands of citizens of the State of
217 Ohio, county and city, but designedly and intentionally, placed a much higher value thereon, which valuation so purposely equalized and determined by said State board of equalization, the auditor of said State did certify to the said auditor of Cuyahoga county, which valuation so certified the said county auditor did enter upon the tax duplicate of said county for the year 1885; that, afterwards, said county auditor did enter upon the tax duplicate of said county for the year 1885 against your orator, a tax on such valuation of such shares for the year 1885 amounting in the aggregate to $12,890.15, and upon a valuation as aforesaid of such shares of $495,774.76, exclusive of the assessed value of its real estate; that a large part of the capital stock of your orator is invested in the obligations and securities of the United States, and in the lawful money thereof, and that said tax so levied and assessed, was and is, in violation of law, unauthorized and void. That the said tax was levied on a valuation 11.455 per cent. higher than that fixed by the county auditor aforesaid and about four-fifths thereof for the city of Cleveland, to answer the various purposes of that municipal body; that said duplicate as required by law, with the said taxes charged thereon, has been by said county auditor delivered to said Henry N. Whitbeck, treasurer of said county of Cuyahoga, to be by him collected from your orator by distraint, attachment or other legal proceedings as provided in said statutes, who will immediately

proceed to enforce the collection thereof, either by sacrifice of such shares by enforcing the lien thereon created by said statutes, or otherwise, unless restrained by the injunction of this honorable court. And your orator further represents and shows unto your honors that in and by the second section of the twelfth article of the constitution of said State it is provided that "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and also all real and personal property according to its true value in money," and in and by the third section of the same article that "all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals," and by the fourth section of the thirteenth article, it is further provided that "the property of corporations now existing or hereafter created shall forever be subject to taxation the same as the property of individuals." And in and by the act of Congress under which your orator is incorporated the right of the State to tax any owner of its shares is made
218 subject to this condition: "That the taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such State." Your orator further avers that by section 2730 of the Revised Statutes of Ohio it is enacted that "the term 'credits' shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due to, or to become due to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this State, other than such as are held to be money as hereinbefore defined, when added together (estimating every such claim or demand at its true value in money), over and above the sum of legal, *bona fide* debts owing by such person;" and by section 2736 of the Revised Statutes of Ohio, it is provided that every person required to list property for taxation shall deliver to the assessor annually a statement of all personal property, money and "credits" and other property in his possession or under his control on the day preceding the second Monday of April of that year, which he is required to list for taxation; and by section 2737 it is provided that such statement, among other things, shall truly set forth the amount of "credits" possessed by such person as that term is by the above-recited statute defined. Your orator says that a large amount of moneyed capital in the hands of individuals invested in promissory notes and other obligations and credits is by the aforesaid provision allowing deduction of legal, *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares, as to which no exemption or deduction is provided for by the laws of the State, which discrimination in is direct violation of the restrictions of said section 5219 of the Revised Statutes of the United States. Your orator further avers that the following-named stockholders of said bank were, on the said day next preceding the second Monday of April, A. D. 1885, the owners and thence until now have owned and still continue to own, the number of shares of the stock of said bank set op-

posite their respective names, viz: T. P. Handy, 600; S. Chamberlain, 500; R. L. Chamberlain, 100; W. W. Bingham, 150; S. L. Mather, 400; James Barnett, 400; Amos Townsend, 240; L. A. Murfry, 500; C. L. Murfry, 50; E. R. Perkins, 530; James Parmelee, 70. And at the day last named and at the time the cashier of said banking association made return to the auditor of Cuyahoga county, Ohio, of the names and residences of the
219 shareholders of said association with the number and par value of the shares of the capital stock of said banking association for the year 1885, to wit, between the first and second Mondays of May, of said year, each of said above-named stockholders was indebted and owing to others of legal, *bona fide* debts a sum in excess of the credits from which under the laws of Ohio he was entitled to deduct said debts, to an amount equal to the value of said shares except said E. R Perkins and said C. L. Murfry, the excess of whose debts over the credits which by the laws of Ohio they were entitled to deduct from their credits equal- in the case of said Perkins the value of 320 of his said shares and in the case of said Murfry the value of 25 of his said shares, which said excess of said debts over credits as aforesaid, should be deducted from the assessed value of said shares, so owned by him, and by reason of the facts above stated said shares of said stock should not have been placed on the tax duplicate, and no tax should have been assessed thereon. And your orator alleges that neither of the above-named shareholders listed any of said shares for taxation nor did either authorize any one to list them for him. That at the time of the return and statement to the auditor of Cuyahoga county as above stated neither said banks or said cashier had knowledge of the fact that the shareholders above named were indebted as aforesaid and no opportunity was given them, or either of them, nor was any provision therefor made by law, to deduct from the value of said shares so owned by them the amount of said indebtedness, or to demand the right so to do, or demand that the same should be done, but your orator alleges that on the 17th day of December, A. D. 1885, and before the tax assessed on said shares became due and payable each of said shareholders, and your orator, made due and legal showing and proof to said auditor of Cuyahoga county, when said return was made and to said respondent of the existence of the said indebtedness and demanded that the same should be deducted from the assessed value of the shares owned by him and returned by your orator, but both the respondent and said auditor refused to make said deductions and insisted that the whole of said shares as then assessed should remain upon the tax duplicate and insisted upon the payment of the whole of the tax as assessed thereon. And your orator insists that by reason of the premises above set forth, there should be deducted from the shares of the capital stock owned by said shareholders above named, and now standing on the tax duplicate of said county
220 $285,600 par value of the shares of said stock, in all the sum of $141,543.48 according to the assessed value thereof. And your orator further represents that on the 17th day of December, A. D. 1885, on behalf of the shareholders owning said shares, it duly

tendered to said treasurer and offered to pay for the taxes due December 20th, 1885, on said shares the sum of $3,942.59 and is still ready and willing to pay the same, as well as the other half, on the same basis of valuation in manner and at the times provided by law for the payment of taxes, to wit, on or before the 10th, of June, A. D. 1886, if the treasurer will receive it or the court so orders; but said treasurer has so far refused to receive said payment unless your orator would also pay the whole amount of said tax as it stands on the duplicate.

Your orator avers and insists that the taxes so levied and assessed against it on account of its said shares of stock are unjust, illegal and void for the following among other reasons: 1st. That said tax is levied and assessed against your orator directly, and is in violation of the act of Congress under which your orator is incorporated. 2nd. That the laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him and requires him to list for taxation only the excess of credits over his indebtedness, and that such is the uniform practice throughout the State, and that under the laws of the same State the owner of capital stock of your orator is denied the right to deduct therefrom his indebtedness, but is required to list for taxation the whole number of shares owned by him and not simply the excess of the value of said shares over his indebtedness, and your orator insists that such discrimination results in the taxation of your orator's stock at a much greater rat than is assessed upon other moneyed capital in the hands of individual citizens of Ohio. 3rd. Their property in this corporation is not valued and taxed the same as the property of individuals, and the burden of taxation upon it is very much greater, nor has any equality been preserved in the valuation of the shares for taxation as compared with other property in the locality where your orator is established; on the contrary, the valuation in proportion to the value is fully twice as much as that fixed on other property, while the rate of levy is the same. 4th. The proceedings of said State board of equalization were irregular, illegal and of no binding obligation, for, while the said act proposes to give authority to examine and equalize the value of such shares as fixed by the county auditor and as reported by him to the State auditor, yet the said board did in fact examine and equalize as aforesaid, and not otherwise, the values of such shares fixed by the county auditor and determined by him, to the State board of equalization; which value, so fixed and returned, the said State board were not authorized by law to examine, equalize or in any manner meddle with. While said act proposes to give authority to hear complaints and to equalize the value of said shares as fixed by the county auditor, not increasing the aggregate more than 20 per cent. of such valuation, yet your orator avers that said board has proceeded without any complaint made against the valuation made by said auditor and without any notice to your orator, or the other national banks located in said city and county, or the shareholders thereof, to increase arbitrarily the valuation for taxation more than five hundred thousand dollars, upon your orator, and

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upon other national banks of the said city, and upon the shareholders thereof, without any hearing or any opportunity for hearing, as is fairly required by said act. 5th. That the taxation of the shares of your orator's stock, as aforesaid, is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of Ohio. 6th. The necessary effect of the proceedings had in the assessment and levy of the taxes standing against your orator and the shares thereof owned by its said shareholders, has been to deprive your orator and such shareholders, both in the manner of valuation and equalization, of all benefit of the constitution and general laws of the State, by which only uniformity in the burdens of taxation upon all description of property could be secured—to take from them the security afforded by the limitations of the acts of Congress and to impose upon them such excessive exactions as to make the franchises granted by said act comparatively valueless. And your orator further represents that if the shares of said stockholders are permitted to be sold under the lien created on them by section 2839 of the said Revised Statutes of Ohio, or otherwise, irreparable injury would not only be done to each of the shareholders, but also to your orator; and it would thereby be subjected to great loss of standing and credit and other injuries, for the redress of which the law affords no remedies, and the franchises with which your orator is invested by the act of Congress aforesaid, would not only be greatly impaired in value, but if such illegal exactions are to continue and be persisted in, would be rendered nearly useless; that the disability imposed upon your orator to make transfers or pay dividends of or upon shares upon which such illegal tax remains unpaid would damage all the
222 ordinary business of your orator and introduce confusion and uncertainty into its transactions, and the consequent loss of public confidence upon which its success depends; or, if your orator should pay such illegal tax and attempt to deduct the amount from the dividends or other funds of the shareholders in its hands—which many of its shareholders have already prohibited its doing—it would be subjected to a great multiplicity of suits, brought by its separate shareholders for so doing; and, in any event, a great number of suits would be rendered necessary to adjust the rights of all the parties, and your orator would be subjected to great expense and irreparable injury thereby. Inasmuch, therefore, as your orator is remediless by the strict rules of the common law, and relievable only in equity, it prays that said Henry N. Whitbeck, treasurer of said Cuyahoga county, may be made party defendant to this bill of complaint; that the writ of subpœna may issue against him, and that he may answer the premises; that your honors will grant unto your orator your writ of injunction strictly restraining and enjoining during the pendency of this suit the said Henry N. Whitbeck, treasurer of said Cuyahoga county, as aforesaid, from collecting or attempting to collect from your orator, or said individual stockholders, by distraint or otherwise, any of the said taxes as the same stand charged on the said duplicate, and that upon the final hearing thereof, the said tax may be declared and decreed wholly ille-

gal and void; or, if your honor should consider your orator not entitled to the relief aforesaid, that the said respondent may be decreed to receive in full of said taxes the sum so tendered by your orator, and be perpetually enjoined from collecting or attempting to collect the balance of said taxes so illegally assessed, and for such other and further relief in the premises as equity and good conscience require.

BOYNTON & HALL,
Solicitors for Complainant.

UNITED STATES OF AMERICA, }
Northern District of Ohio. }

Be it remembered that on this 17th day of December, 1885, personally came before me C. L. Murfry, who, being by me duly sworn, deposes and says that he is the cashier of the complainant in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; that all the allegations and statements therein contained as derived from the information of others,
223 he believes to be true, and all other allegations and statements therein made are true in substance and in fact.

C. L. MURFRY, *Cr.*

Sworn to before me and signed in my presence, the 17th day of December, 1885.

NORTON T. HORR,
Notary Public in and for Cuyahoga County, State of Ohio. [SEAL.]

Subpœna.

And afterwards, to wit, on the 18th day of December, A. D. 1885, the following subpœna was filed in this cause, in said court, viz:

UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon Henry N. Whitbeck, treasurer of Cuyahoga county, Ohio, if he may be found in your district, to appear in the circuit court of the United States, within and for the district aforesaid, at Cleveland, on the first Monday in March next, to answer a certain bill in chancery filed and exhibited in the said court against him by the Mercantile National Bank of Cleveland, Ohio. Whereof he is not to fail under the penalty of the law, thence ensuing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of United States, this 17th day of December, A. D. 1885, and in the 110th year of the Independence of the United States of America.

A. J. RICKS, *Clerk,*
By O. C. BEATTY,
Deputy Clerk. [SEAL.]

Memorandum.

The said defendant is required to enter his appearance in the suit in the clerk's office of said court on or before the first Monday of February, 1886, otherwise the said bill may be taken *pro confesso*.

A. J. RICKS, *Clerk.*

224 NORTHERN DISTRICT OF OHIO, *ss:*

On the 18th day of December, 1885, I made due service of this writ, by delivering a true and duly certified copy thereof to H. N. Whitbeck, treasurer of Cuyahoga county.

W. T. GOODSPEED,
U. S. Marshal.

(Indorsed:) Returnable February 1st, 1886. Rule day for appearance, February 1st, 1886, rule day for answer, March 1st, 1886. Returned and filed December 18th, 1885. A. J. Ricks, clerk.

And afterwards, to wit, on the 18th day of December, A. D. 1885, being a day of the October term, A. D. 1885, of said court, the following order was filed in this cause in said court, viz:

Restraining Order.

This day came the complainant, and came also the defendant, by counsel, and the motion for an injunction as prayed for came on for hearing, and the court being fully advised in the premises, do order that the defendant be and he is hereby enjoined and restrained prior to the final hearing and further order of this court in the premises from collecting the excessive taxes and assessments complained of in the complainant's bill, by distraint or otherwise, and from serving notice as such treasurer forbidding the officers of said bank from making transfers of the shares or payment of the dividends or other funds belonging to said shareholders. It is further ordered that said complainant pay to said defendant as treasurer the amount of taxes admitted by said bill to be due, if said treasurer will receive the same, and in case said treasurer receives the same his receipt therefor shall be without prejudice to his right to test the validity of the taxes in dispute in said case. It is further ordered that said complainant file herein its bond in the sum of $2,000, with surety approved by the clerk of said court, conditioned according to law, to indemnify defendant for any damage that may be awarded by the court in the premises against said complainant.

And afterwards, to wit, on Thursday, the 30th day of December being a day of the October term, A. D. 1885, of said court, the following order was entered in this cause in this court, viz:

225 *Order.*

It being shown to the court that the first name of said defendant is Horatio and not Henry, on motion of said plaintiff it is ordered

that the name Henry wherever it appears in the pleadings, process or return thereof or orders in said case, be changed to Horatio, and that hereafter said case proceed against said respondent as Horatio N. Whitbeck, instead of Henry N. Whitbeck.

And afterwards, to wit, on the 15th day of March, being a day of the February term, A. D. 1886, of said court, the following order was entered in this cause in said court, viz.:

Leave to File Demurrer.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio.

In this cause leave is given the respondent to file a demurrer to complainant's bill instanter.

And afterwards, to wit, on the 15th day of March, A. D. 1886, the following demurrer was filed in this cause in said court, viz.:

Demurrer.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Complainant,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio, Defendant.
Demurrer.

To the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

The demurrer of Horatio N. Whitbeck, treasurer of Cuyahoga county, defendant, to the bill of complaint of The Mercantile
226 National Bank of Cleveland, Ohio, complainant.

This defendant, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true, demurs thereto and for cause of demurrer says:

1. That this court ought not to take cognizance of or sustain the action aforesaid, because he says that said court has no jurisdiction thereof as it appears from said bill of complaint that said complainant is established and doing business in the city of Cleveland, in the county of Cuyahoga and State of Ohio.

2. And for further cause of demurrer he says that it appears by the complainant's own showing in its said bill of complaint that the said complainant is not entitled to the relief prayed for in its said bill against this defendant, and that the facts set forth in the said bill of complaint do not make such a case as entitle said complain-

ant to any relief whatever against the defendant. Wherefore, and for divers other causes of demurrer appearing in said bill of complaint, this defendant demurs to the said bill and to all matters and things therein contained, and prays the judgment of the court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of Horatio N. Whitbeck, treasurer of Cuyahoga county, Ohio, defendant, to the bill of complaint of The Mercantile National Bank of Cleveland, Ohio, complainant, is well founded in law and proper to be filed in the above case.

HADDEN, DISSETTE, COLLISTER,
JAMES LAWRENCE,
CLARENCE BROWN,
Solicitors for Respondent.

UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

Horatio N. Whitbeck, being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

H. N. WHITBECK.

227 Sworn to before me by the said Horatio N. Whitbeck, and by him signed in my presence, this 15th day of March, 1886.

A. E. SHEARER,
Deputy Clerk Common Pleas Court,
Cuyahoga County, Ohio. [SEAL.]

And afterwards, to wit, on Thursday, the 25th day of March, being a day of the February term, A. D. 1886, of said court, the following proceedings were had in this cause in said court, viz:

Demurrer Overruled.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, }
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio. }

This cause came on this day to be heard upon the demurrer of Horatio N. Whitbeck, treasurer, to the complainant's bill of complaint herein, and the same was *agreed* by counsel, and thereupon, upon consideration thereof, it is ordered that the same be overruled and leave is given the respondent to file his answer by April 15th, 1886.

And afterwards, to wit, on the 22nd day of April, A. D. 1886, the following answer was filed in this cause in said court, viz:

Answer.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Complainant,
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio, Defendant.
} Answer.

To the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

228 The answer of Horatio N. Whitbeck, treas. of Cuyahoga Co., Ohio, defendant, to the bill of complaint of The Mercantile National Bank of Cleveland, Ohio, complainant.

This defendant reserving to himself all rights of exception to the said bill of complaint, for answer thereunto, admits that he is the treasurer of Cuyahoga county, Ohio, and is a citizen of Ohio, and of said national banking association, incorporated under the act of Congress mentioned in said complaint, with the amendments thereto, and is established and doing business in the city of Cleveland, in said northern district of Ohio; that said complainant has a capital stock of $1,000,000.00, divided into 10,000 shares of one hundred dollars each, all of which is paid up and certificates for the shares are outstanding. That the cashier of said complainant reported in duplicate to the auditor of said county the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday in May, 1885, together with a statement of the names and residences of the stockholders therein, and the number of shares held by each, and the par value of each share, as required by section 2765 of the Revised Statutes of Ohio. That the real estate included in said return is otherwise and separately assessed and charged on the tax duplicate of said county. That the auditor of said county thereupon proceeded to fix the total value of the shares of said bank at $444,820.00, exclusive of the assessed value of its real estate, and made out and transmitted to the annual State board for the equalization of the shares of incorporated banks a copy of the report as made by said cashier, together with the valuation of such shares as so fixed by said county auditor; that the said State board of equalization did examine the return aforesaid made by said cashier to said county auditor and the value of such shares as fixed by said county auditor and the said board (having proceeded in all respects according to law) fixed the aggregate valuation of the shares of said complainant at $495,774.76, exclusive of the assessed value of its real estate. That the auditor of said State did thereupon certify to the auditor of said county the valuation of the shares of said complainant as equalized and determined by said State board of equaliza-

tion, which valuation the said county auditor did enter upon the tax duplicate of said county for the year 1885, and did also enter upon the tax duplicate for the year 1885 a tax on such valuation of such shares for said year amounting in the aggregate to $12,890.15, and upon a valuation as aforesaid of such shares of $495,774.76, exclusive of the assessed value of its real estate. And that afterwards the said duplicate, as required by law, with the said taxes
229 charged thereon, was by said county auditor delivered to the said Horatio N. Whitbeck, treasurer of said county, to be by him collected. This defendant also admits that as said tax duplicate for the year 1885 was originally made up by said county auditor and delivered to the said county treasurer the said tax levied on the total valuation of the shares of said bank, exclusive of the valuation of the said real estate, was entered against the name of said complainant, without specifying therein the names of the several shareholders or the tax assessed on the shares held by each, but giving the separate valuation of each of said shares, exclusive of real estate, as fixed by said State board of equalization. He says that said tax was so entered against the name of said complainant, because, for many years the said complainant, in common with other banks located in said county, had uniformly paid the taxes chargeable against the shares of its stockholders, and it was agreed and understood between said bank and said county auditor that it would continue to pay the same. This defendant does not admit that said duplicate as so made up and delivered was in any respect insufficient or illegal, but, in order to avoid all possible ground for complaint, the said county auditor, since the commencement of this bank action, has corrected the said duplicate, as he is authorized to do by the laws of Ohio, by duly entering thereon the names of the several shareholders of said complainant, the number and valuation of the shares held by each and the amount of the tax chargeable thereon; and this defendant disclaims any purpose of enforcing the collection of said taxes in any other manner than as authorized by law. And further answering the said bill of complaint, this defendant denies that he or any others whose acts he is carrying into effect, is violating or has violated any rights of the shareholders of said complainant, either in respect to the taxation of their shares of stock in said bank, or otherwise; he denies that the said auditor of Cuyahoga county did meet with or consult with the board of equalization for the city of Cleveland, for the purpose of more accurately determining and fixing the value of said shares, or that the valuation by said county auditor reported to the State board of equalization was fixed and determined upon by said county auditor with the assistance and approval of said city board of equalization, or that it is by law the duty of said city board of equalization to value and equalize for taxation all moneyed capital and personal property of every kind in the hands of individual citizens of the State of Ohio,
230 resident in said city, except only the capital, assets and shares of incorporated banks. He denies that said county auditor placed the value upon said shares which was in fact, or was known by him to be in excess of the value fixed in said county on other

moneyed capital in the hands of individual citizens of the State of Ohio, and of said city and county.

He denies that said State board of equalization did not examine any other returns made by said county auditor except the return made by the cashier of said complainant to said county auditor, and the value of such shares as fixed by said county auditor, or that said State board of equalization knowingly or designedly did fix a higher per cent. of value and assessment for taxation upon the capital stock and shares of said complainant than upon the capital and shares of other banks organized and existing under the laws of the State of Ohio, or a higher rate per cent., than was assessed upon other moneyed capital in the hands of citizens of the State of Ohio, or higher than that fixed upon other moneyed capital in the hands of such citizens in the said county of Cuyahoga, city of Cleveland.

He denies that said State board of equalization did not equalize the value of said shares with the value of other moneyed capital in the hands of citizens of the State of Ohio, county and city aforesaid, or that said State board of equalization designedly or intentionally placed a higher valuation thereon, or that the tax levied and assessed in the valuation of said shares was or is in violation of law, unauthorized or void. Said defendant further denies that the levying and assessing of said tax against said complainant directly is in violation of the act of Congress of the United States under which said complainant is incorporated; he denies that the tax, the collection of which said complainant by its said bill seeks to enjoin is in violation of any act of Congress of the United States or is levied or assessed in a manner which is in violation of any act of Congress of the United States. He denies that the shares of the capital stock of said complainant, the property of its shareholders, are not taxed by any law prescribing any uniform rule for the valuation of the property of said shareholders and the levying of taxes thereon, as provided by the constitution of the State of Ohio; he denies that the acts of the General Assembly of the State of Ohio under and by virtue of which the taxes in said State are or purport to be assessed, do not have a uniform operation throughout said State as required by the constitution of the said State.

231 He denies that the property of the owners and holders of the shares of the capital stock of said complainant in said complainant corporation is not valued and taxed the same as the property of individuals, or that the burden of taxation upon the shares of said stockholders in said corporations is very much or any greater than upon the property of individuals; he denies that equality has not been preserved in the valuation of said shares for taxation as compared with other property in the locality where said complainant is established; he denies that the valuation of said shares in proportion to the value thereof is fully twice as much as, or any more than the valuation fixed upon other property. While admitting that the constitution and laws of Ohio contain provisions in reference to taxation substantially as quoted in said bill of complaint this defendant says that all the provisions of said constitution and laws upon that subject should be considered in order to deter

mine the force and effect of those quoted, and he denies that a large amount of moneyed capital in the hands of individuals invested in promissory notes and other obligations and credits is expressly exempted from taxation in said State. He denies that any of the shareholders of said banking association, at the times named in said bill of complaint were indebted or owing to others of *bona fide* debts, a sum in excess of the credits from which under the laws of Ohio he was entitled to deduct said debts, to an amount equal to the value of his said shares or any part thereof. He denies that either of said shareholders was then indebted in any sum whatever, or that, even if any of them was so indebted as claimed in said bill of complaint, he is thereby entitled to deduct the excess of such indebtedness over his credits from the assessed value of his said shares, or that for any reason said shares of stock should not have been placed on the tax duplicate and no tax assessed thereon. This defendant denies the averment in said petition that neither of said shareholders authorized any one to list his said shares for him. He denies that it was necessary for said shareholders so to do.

He denies that at the time of the return and the statement by the cashier of said bank association to the auditor of Cuyahoga county, neither said bank nor its cashier had knowledge of the indebtedness of said shareholders, if any such indebtedness existed. He denies that on the 17th day of December, 1885, or at any time said complainant or any of said shareholders made due and legal showing and proof to the auditor of said county or to this defendant of
232 the existence of said alleged indebtedness, or demanded that the same should be deducted from the assessed value of the shares owned by such shareholders and returned by said complainant. He denies that any sum whatever should be deducted from the valuation of the shares of the capital stock owned by said shareholders named in said bill of complaint.

This defendant further denies that the taxes so levied and assessed on the shares of said complainant's stock are, for the reasons alleged in said bill of complaint, or for any reason, unjust, illegal or void. He denies that the laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him, or that such is the uniform practice throughout the State. He denies that the proceedings of said State board of equalization were in any respect irregular or illegal or were for any reason of no binding obligation, or that said State board of equalization proceeded arbitrarily to increase the valuations for taxation upon said complainant, and upon other national banks of the said city, and upon the shareholders thereof without any opportunity for hearing. He denies that the taxation of the shares of said complainant's stock is at a much or any greater rate than is assessed upon other moneyed capital in the hands of individual citizens of said State of Ohio. He denies that the necessary effect of the proceedings had in the assessment and levy of the taxes standing against said complainant, and the shares thereof owned by its said shareholders, has been to deprive said complainant or said shareholders either in the matter of valuation or equalization of any of the benefits of the constitution or gen-

eral laws of said State of Ohio, or to take from complainant or said shareholders any security afforded them by the limitation of said act of Congress, or to impose upon said complainant or said shareholders any undue or excessive exactions or any such exactions as to make the franchises granted by said act of Congress comparatively valueless.

He denies that irreparable injury would be done either to complainant or to said shareholders or any of them by the enforcement of the lien created on said shares by section 2829 of the Revised Statutes of Ohio; or, that said complainant would thereby be subjected to great loss of standing or credit, or subjected to any other injuries for the redress of which the law affords no remedies, or that the franchises of said complainant granted by said act of Congress would be greatly impaired or rendered nearly useless or that the disability imposed upon complainant to make transfers or pay
233 dividends of, or upon said shares, upon which said taxes remains unpaid, would damage all the ordinary business of complainant, or introduce confusion or uncertainty into its transactions, or incur any loss of public confidence; or that if said complainant should pay the taxes for those of its shareholders whom by law it may pay for and deduct the amount from their dividends or other funds of said shareholders in its hands, it would be subjected legally to any suit which might be brought against it by said shareholders or any of them, for so doing; or that said complainant would be subjected to great expense or irreparable injury by so doing, or that a great number of suits would be rendered necessary to adjust the rights of all the parties.

And this defendant further denies each and every allegation in said bill of complaint not hereinbefore admitted or expressly denied. To the contrary of all of which this defendant avers that by and under the act of Congress of the United States, in said bill mentioned, the shares of stock of said complainant are personal property and in and by said act it is permitted that the legislature of each State might determine and direct the manner and place of taxing all the shares of the national banking associations organized and established thereunder, located within such State, subject only to two restrictions, viz: 1st, that the taxation thereon should not be at a greater — than should be asssessed upon other moneyed capital in the hands of individual citizens of such State and 2nd, that the shares owned by any non-resident of the State should be taxed in the city or town in which such association should be located and established. And this defendant says that the taxes mentioned in said complainant's bill, assessed upon the shares of said complainant is not taxed at a greater rate than is imposed by the State of Ohio and the laws thereof, upon other moneyed capital in the hands of the individual citizens of said State, and individual citizens of said county, city and of said State, and that the shares of the non-resident shareholders are taxed in said city of Cleveland where said complainant's bank is established.

And this defendant further says that said annual State board for the equalization of the shares of incorporated banks, consisting of

the governor, auditor of State and attorney general of said State, did meet on the third Tuesday of June, A. D. 1885, at the office of said auditor of State at Columbus, and having before them the statement and returns of the complainant's cashier and the valuation of the complainant's shares fixed by said county auditor, with like
234 returns and valuation of all the incorporated banks within the State of Ohio, proceeded to consider at the same, and, having heard all complaints, equalized the value of the shares of all the incorporated banks within said State as determined upon and reported by the county auditor to said board and to said auditor of State, and thereupon made an equalization of the valuation of all the shares of all the incorporated banks within the State of Ohio according to the rules prescribed by the laws of said State for valuing and equalizing values of real and personal property. That in acting upon the shares of said complainant for the purpose of equalizing their value for taxation aforesaid, said annual State board of equalization was governed by the same rules and adopted and used the same methods as those by which it was governed and which it used in equalizing the shares of all other incorporated banks for taxation, and the same as governed and were used by all other equalizing boards and all other officers of said State, county and city in the valuing and equalizing of all other property for taxation. That neither the said complainant or its cashier or other officers, nor any of its shareholders appeared before said board or presented to it any complaints or any statements of the several alleged matters and things now set forth in said bill of complaint. That it appearing from said cashier's return that the capital stock of complainant, taken together with its surplus and undivided profits, amounted to $1,042,730.41, and that said county auditor acting upon said return had fixed the value of all the shares of the said complainant for taxation at $444,820 (after having deducted from said value, the value of said real estate) said annual State board of equalization, governed by the rules and adopting and using the methods aforesaid, and acting wholly within the limits and discretion allowed them by the statute of said State, increased said valuation so as aforesaid, fixed by said county auditor, by adding thereto $50,954.76, making said valuation of all of said shares $495,774.76 and each of said shares thereof (the par value of which is $100) $49.57 which sum is not in excess of the true value in money of said shares, but on the contrary, is much less than the true value in money thereof.

And said board having equalized and fixed the valuation of said shares of complainant, said auditor of State thereupon transmitted to the auditor of Cuyahoga county the valuation of the shares of said complainant, as aforesaid, determined and fixed by said State board. And the said county auditor of said Cuyahoga county, thereupon, as he was required by law, did place upon the duplicate
235 of said county, with all the other taxable property in said county, the said shares of said complainant at the valuation so fixed upon and determined by said State board of equalization, and assessed upon the same merely the same rate as was assessed

upon all other property upon the county duplicate in the city of Cleveland for the said year of 1885 at the place where said complainant is located and doing business, and being the same rate as that assessed upon the moneyed capital of the individual citizen of said State, resident in said city of Cleveland. And this is the same tax mentioned and described in the complainant's bill. And this defendant further says that, under the laws of Ohio, he as the treasurer of said county, has no duty or authority in respect to the assessment or appraisement of property for taxation; that the auditor of said county has no further duty or authority in respect to the assessment or appraisement for taxation of the shares of incorporated banks after he has fixed the total value of such shares and has made out and transmitted to the annual State board for the equalization of the shares of incorporated banks a copy of the report made by the cashier of the several banks, together with the valuation of such shares as fixed by said auditor in pursuance of section 2766 of the Revised Statutes of Ohio; that if the shareholders of said complainant were entitled to any deduction from the value of their said shares on account of their individual indebtedness (which this defendant does not admit), due showing and demand therefor should have been made to said auditor of said county before he fixed the value of said shares, and transmitted the same to the auditor of State as aforesaid; but that no such showing or demand was made to said county auditor, nor was any showing or demand, or any complaint in respect thereto made to said State board of equalization. Defendant says that at the time when said complainant claims that its said shareholders made demand for the deduction of their alleged indebtedness from the valuation of their said shares, the entire process of the appraisement and equalization of the valuation of such shares had long since been completed, and neither this defendant nor said county auditor had then authority to allow any deduction whatever from the valuation of said shares as the same had been fixed and determined.

And the said defendant further answering denies that the said complainant is entitled to the relief, or any part thereof in
236 the said complaint demanded, and he prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

HADDEN, DISSETTE & COLLISTER,
JAMES LAWRENCE,
CLARENCE BROWN,
Solicitors for Defendant.

UNITED STATES OF AMERICA, }
Northern District of Ohio, } ss:

H. N. Whitbeck being duly sworn, deposes and says that he is the defendant in the foregoing answer; that he has read the same and knows the contents thereof and that the same is true, of his own knowledge, except as to the matters and things therein con-

tained on information and belief, and as to such matters he verily believes them to be true.

H. N. WHITBECK.

Sworn to before me by the said H. N. Whitbeck, and by him subscribed in my presence this 21st day of April, A. D. 1886.

L. E. MEACHAM,
[SEAL.] *Deputy Clerk, Common Pleas Court, Cuyahoga County, Ohio.*

And afterwards, to wit, on the 3d day of May, A. D. 1886, the following replication was filed in this cause in said court, viz:

Circuit Court of United States, Northern District of Ohio.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, *vs.* HORATIO N. WHITBECK, Treasurer, etc. } In Equity. No. 4411.

Replication.

The replication of the above-named complainant to the answer of the above-named defendant.

The repliant saving and reserving to itself now and at all times hereafter all and all manner of benefits and advantage of exception which may be had or taken to the manifold insufficiencies of said answer for replication thereunto says, that it will aver, main-
237 tain and prove the bill of complaint to be true, certain, and sufficient in law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this that any other matter or thing whatever in the said answer contained, material and effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied is true; all which matters and things this repliant will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by the said bill it has already prayed.

BOYNTON & HALE,
Solicitors for Complainants.

Order Appointing Special Master.

And afterwards, to wit, on Saturday the 6th day of November a day of the October term, A. D. 1886, of said court the following order was entered in this cause in said court, viz:

In this cause it is ordered that A. J. Ricks, because he is experienced in matters of accounting be appointed a special master to examine the evidence and record now on file and to report who, if any of the shareholders of the complainant, on the day preceding

the second Monday of October, 1885, had *bona fide* indebtedness which should have been deducted from the valuation of the shares.

And afterwards, to wit, on the 15th day of November, A. D. 1886, the following affidavit was filed in this cause in said court, viz:

Affidavit.

STATE OF OHIO, }
Cuyahoga County, } ss:

T. P. Handy being first duly sworn on his oath, says that the Mercantile national bank is a corporation organized and doing business at Cleveland, Ohio, under the act of Congress known as "national bank act," and the act amendatory thereto and its shareholders are subject to the provisions of and entitled to the benefits conferred by section 5219 of the Revised Statutes of the United
238 States; that on the day next preceding the second Monday of April, A. D. 1885, and at the time the cashier of said bank made out and returned to the auditor of Cuyahoga county, Ohio, a statement of the names and residences of the stockholders of said bank with the number of shares of the capital stock owned and held by each and the par value thereof for the year 1885, to wit, between the first and second Mondays in May, A. D. 1885, as required by section 2765 of the Revised Statutes of Ohio, affiant was an owner of 600 of said shares of the par value of $100 per share, and the same were returned, as belonging to him, by said cashier and from said day next preceding the second Monday of April, 1885, he has continued to own and now owns said number of shares of stock in said bank.

Affiant further says that he has never been required by any authority to list said shares for taxation; that when the same were required to be and were so returned for taxation by said cashier, and also on the day next preceding the second Monday of April, 1885, affiant was indebted and owing to others in legal, *bona fide* debts the sum of $80,000 over and above any and all credits which by law he was entitled to deduct therefrom, and from which excess of debts over credits should be deducted said 600 shares of said stock. Affiant says that in making up the sum of said debts owing by him in excess of the credits deducted therefrom, he has not included any claim or obligation which section 2730 of the Revised Statutes of Ohio requires to be rejected, which he is ready to make, if required or permitted by an exhibit of such indebtedness. Affiant further says that the tax and assessment upon said shares were made thereon in excess of the amount for which the same were assessable, without his authority or consent, and the same were listed by said cashier in the manner aforesaid without any authority from the affiant for so doing and in sole compliance with the statute, and affiant has had no opportunity or way provided to secure said deduction of credits from said shares other than to seek said deduction from the value of the shares since they were carried on the duplicate.

T. P. HANDY.

Sworn to before me and in my presence subscribed this 16th day of December, A. D. 1885.

NORTON T. HORR,
Notary Public.

239 And afterwards, to wit, on the 8th day of November, A. D. 1886, the following master's report was filed in this cause in said court, viz.:

Report of Special Master.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
H. N. WHITBECK, Treasurer.
} In Equity. No. —.

To the honorable the judges of the circuit court:

By an order entered in this case the undersigned was appointed a special master to ascertain and report from the testimony and record who, if any of the shareholders of the complainant on the day preceding the second Monday of April, 1885, had *bona, fide* indebtedness which should have been deducted from the valuation of the shares of the capital stock of complainant bank. The master reports that having examined the evidence and heard the claim of counsel, he finds and reports that all the shareholders are entitled to the deductions as charged in the bill except the following, who should be taxed for the amount stated, viz.: E. R. Perkins had credit subject to taxation above his indebtedness on the day named to the sum of $4,374.40; C. L. Murfry had credits subject to taxation above his indebtedness on the day named to the sum of $724; Robert L. Chamberlain had credits subject to taxation above his indebtedness on the day named to the sum of $4,448; James Parmelee had credits subject to taxation above his indebtedness on the day named to the sum of $3,113.60; James Barnett had credits subject to taxation above his indebtedness on the day named to the sum of $17,792. All of which is respectfully submitted.

A. J. RICKS,
Special Master.

240 And afterwards, to wit, on the 8th day of November, being a day of the October term, A. D. 1886, of said court, the following decree was entered in this cause in this said court, viz.:

Decree.

THE MERCANTILE NATIONAL BANK
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County.
} Decree.

At this term the parties appeared by their solicitors and this cause came on for hearing upon the merits, and the court being fully ad-

vised in the premises from the testimony and exhibits and special master's report adduced in open court, do find all the allegations of the bill to be true, except those allegations which charge that James A. Barnett, Robert L. Chamberlain and James Parmelee were the owners of shares of capital stock of said bank, from which they were entitled to deduct, respectively, an indebtedness of theirs, which allegations the court finds are untrue. And it appearing to the court that the amount admitted to the court in said bill to be due to said respondent, has, pursuant to a former order of this court, been paid by said complainant to said respondent, and by him received. It is therefore ordered, adjudged and decreed that said respondent and his successors in office be forever enjoined from proceeding or attempting to collect or from collecting any part of or portion of said tax or assessment remaining unpaid, except the taxes levied upon the valuation of the shares of capital stock of complainant as fixed by the county auditor owned by said Barnett, Chamberlain and Parmelee amounting to $659.29, the amount of tax hereby enjoined being $3,967.55, and it is therefore ordered, adjudged and decreed that said respondent or his successors in office pay the costs in this suit to be taxed for which it is ordered that execution may issue as upon judgments at law.

And afterwards, to wit, on the — day of ——, A. D. 1886, the following proceedings were had in this cause in said court, viz.:

241 *Decree Vacated.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, at the October Term, 1886.

THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio. } No. 4411.

The above-entitled cause having been submitted to the court, and the decree having been entered in said cause in favor of the complainant therein, and the defendant desiring to present the question arising in said cause to the Supreme Court of the United States to be finally decided, and for that purpose intending to appeal said cause No. 4411; on motion of said defendant it is now ordered by the court that the decree- heretofore entered in the above-entitled causes numbered 4411, 4412, 4413, 4414, 4415, 4416, 4417 and 4418, be, and the same hereby are set aside and vacated to await further orders of the court and that the said several complainants have leave to apply any time hereafter to have said decree re-entered.

Approved:

HOWELL E. JACKSON,
Circuit Judge.

And afterwards, to wit, on the 8th day of April, 1887, the decree was rendered in the above-entitled case which decree reads and is in the words and figures following, to wit:

April Term, A. D. 1887, to wit, Friday, April 8th, A. D. 1887.

Present: The Honorable Howell E. Jackson, United States circuit judge, and Honorable Martin Welker, United States district judge.

THE MERCANTILE NATIONAL BANK, CLEVELAND, OHIO, *vs.* HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio.	No. 4411.	Chancery.

242 At this term the parties appeared by their solicitors and this cause came on for hearing upon the merits, and the court being fully advised in the premises from the testimony and exhibits and special master's report adduced in open court, do find *that* all the allegations of the bill to be true, except those allegations which charge that James A. Barnett, Robert L. Chamberlain and James Parmelee were the owners of shares of capital stock of said bank from which they were entitled to deduct, respectively, any indebtedness of theirs, which allegations the court find are untrue. And it appearing to the court that the amount admitted in said bill to be due the said respondents has pursuant to a former order of this court been paid by said complainant to said respondent and by him received. It is therefore ordered, adjudged and decreed that said respondent and his successors in office be forever enjoined from proceeding or attempting to collect or from collecting any part or portion of said tax or assessment remaining unpaid except the tax levied upon the valuation of the shares of the capital stock of complainant as fixed by the county auditor owned by said Barnett, Chamberlain and Parmelee, amounting to $659.20, the amount of tax hereby enjoined being $3,967.55, and it is therefore ordered, adjudged and decreed that said respondent or his successors in office pay costs in this suit to be taxed at $183.47 for which it is ordered that execution may issue as upon judgments at law.

And afterwards, to wit, on the 8th day of April, A. D. 1887, the following bill of exceptions was filed in this cause in said court, viz:

Bill of Exceptions.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant, *vs.* HORATIO N. WHITBECK, Treasurer of Cuyahoga County, Ohio, Defendant.	Bill of Exceptions.

243 Be it remembered that on the trial of this cause at the October term, A. D. 1886, of the circuit court of the United States for the northern district of Ohio, eastern division, the complainant having offered testimony on its behalf tending to sup-

port the issues on its part and having closed its testimony, the defendant to maintain the issues on his part and for the purpose of showing that throughout the State of Ohio the average rate at which moneyed capital other than the shares of national banks, in the hands of individual citizens of such State, was valued for taxation in the year 1885, exceeding sixty-five (65) per centum of its true value in money, offered in evidence the testimony set forth in the depositions on file herein of the following-named witnesses, to wit, Richard Brown, S. L. Arnold, A. J. Frame, G. W. Rutledge, George W. Temple, George W. McPeck, O. F. Serviss, Charles W. Webster, A. J. High, Asa Jenkins, J. W. Cassingham, B. F. Dum, Frank J. Reivhart, Joseph Staffort, W. R. Baker, George A. Crew, J. Henderson, B. B. Evans, O. F. Randolph, Horatio Pearson, W. M. Bowen, S. J. Werick, John D. Turner, William T. Platt, William Howard, W. B. Gilbert, William F. Simmerall, W. R. Muhleman, C. C. Baker, F. W. Sherer, J. C. Beckett, Daniel Morley, William Wallace, Frank J. Eskar, Augustus Robb, B. F. Maples, John W. Kinsey, J. A. Wagner, R. J. Grigsby, Findley R. McLaughlin, C. Minnick, B. B. Stone, T. E. Beckinpaugh, W. W. Place, George W. Le Fever, J. N. Nunmaker, Aaron Wagner, W. J. Jacobs, Andrew Foflinger, J. W. Brenstio, James F. Lingdfeter, Will C. Fisby, W. W. Ferry, W. S. Batrem, W. T. Will, A. A. Patterson, J. B. Elliott, S. M. Barrick, J. M. Shinn, J. E. Robinson, James Roland and Le Grand A. Olin; whereupon the said complainant objected to the admission of all said testimony, which objection was sustained by the court, and all of said testimony was ruled out, to which ruling of the court and to the refusal to admit said testimony the defendant then and there excepted. And thereupon the defendant offered and proposed to prove by the testimony of said witnesses whose depositions had been duly taken and filed herein, as therein set forth, but the court refused to hear or admit any testimony as to said matters holding in accordance with the opinion of the presiding judge that the only testimony competent or material in this action in respect to the question of discrimination and valuation, is testimony relating to the valuation of moneyed capital in the hands of individual citizens, in the county of Cuyahoga where said complainant bank is located; to which ruling and holding of the court and to the
244 refusal to admit said testimony the defendant then and there excepted, and prayed that his bill of exceptions in that behalf might be allowed, which is accordingly done, and upon his motion ordered to be made a part of the record in this case.

HOWELL E. JACKSON, [SEAL.]
Circuit Judge.

M. WELKER, [SEAL.]
District Judge.

And afterwards, to wit, on the 8th day of April being a day of the April term, A. D. 1887, of said court the following certificate of division of opinion was filed in this cause in said court, viz:

Division of Opinion.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division, October Term, A. D. 1886.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
HORATIO N. WHITBECK, as Treasurer of Cuyahoga County, Ohio, Defendant.
No. 4411.

Certificate of division of opinion.

This cause being heard before the Honorable Howell E. Jackson, circuit judge, and the Honorable Martin Welker, district judge, upon the said complainant's bill of complaint, the answer of the defendant, and the replication of said complainant, and the evidence offered in the case; and it appearing from the testimony and being found by the court: 1. That moneyed capital (other than that invested in shares of national banks) in the hands of individual citizens of the city of Cleveland, and county of Cuyahoga in which the complainant bank is located, was by the rule of valuation fixed by the tax officers of said county and city, valued for taxation, in the year 1885 at sixty (60) per centum only of its true value in money. 2. That the auditor of said Cuyahoga county in accordance with the provisions of section 2766 of the Revised Statutes of Ohio, fixed the total values of the shares of incorporated banks at sixty (60) per cent. of their true value
245 in money in accordance with said rule. 3. That the auditor of said Cuyahoga county for the year 1885 in accordance with the rule and practice thereunder adopted for the valuation of other moneyed capital in the hands of individual citizens of the city and county as aforesaid, fixed the value of the shares of the said complainant for said year at 60 per cent. of its true value in money, and certified and transmitted the same to the annual State board of equalization for incorporated banks. That the State board of equalization increased the value of the shares of the complainant from sixty (60) per cent. of their true value in money, to sixty-five (65) per cent. of their true value in money, which later value was certified to the auditor of said Cuyahoga county and by him placed upon the duplicate for said year and said duplicate delivered to the defendant, the treasurer of said county, for the collection of the taxes thereon; that in the year 1885 the total value of the levy for all purposes in said county and city was twenty-six mills on a dollar's valuation, twenty-three mills and six-tenths of which were devoted to county and city purposes, and but two mills and four-tenths to State levy, for State purposes. 5. That no demand for the deduction from the assessed value of any shares of the complainant, of the amount of the *bona fide* indebtedness of any shareholders, until the 12th day of December, A. D. 1885, a date prior to the commencement of this action, at which time the entire process of the appraisement and

equalization of the value of said shares for taxation had been completed, and the tax duplicate for said year had been delivered in accordance with the law to the treasurer of the said county for the collection of said taxes; but the laws of Ohio make no provision for the deduction of the *bona fide* indebtedness of any shareholder from the shares of his stock, and provide no means by which said deduction can be secured. And the complainant having introduced testimony on its behalf tending to support the issues on its part and having closed its testimony, the defendant to maintain the issues on his part offered the testimony of sundry witnesses tending to show: 1. That throughout the State of Ohio, exclusive of Cuyahoga county and eleven other counties, there is, and in the year 1885, was no rule, practice, custom, understanding, agreement or combination either on the part of the assessors, county auditors, board of equalization, or other taxing officers, whereby moneyed capital (other than the shares of national banks) in the hands of individual citizens of said State, was appraised or valued for taxation for
246 said year at less than its true value in money; that throughout the State of Ohio exclusive of Cuyahoga county, and eleven other counties, moneyed capital (other than the shares of national banks) was in the year 1885 valued for taxation at its true value in money in accordance with the constitution and laws of said State; and, 3, that the percentage of their true value in money at which the shares of national banks throughout the State of Ohio were valued for taxation in the year 1885 was less than the average percentage of true value in money at which other moneyed capital in the hands of individual citizens of such State was valued for taxation in said year. To all of which testimony the said complainant by its counsel objected, and said objection was sustained by the court, and testimony of said witnesses was excluded by the court, to which ruling of the court and to the refusal to admit any testimony, said defendant by his counsel then and there duly excepted. And on the foregoing facts there occurred on the hearing of said cause the following question of law upon which the opinion of the said judges were opposed: 1. Whether the valuation for taxation, as aforesaid of the shares of the complainant by the State board of equalization for the shares of incorporated banks at 65 per cent. of their true value was a discrimination prohibited by the act of Congress. 2. Whether the said testimony offered by said defendant and excluded by the court was admissible for the purposes stated. 3. Whether the rule for the valuation for taxation of other moneyed capital in the hands of individual citizens of said city and county where said complainant bank is located, was the sole measure for the valuation of the shares of national banks located therein, or, might the State board of equalization for the shares of incorporated banks lawfully value such shares at a rate not exceeding the average rate at which other moneyed capital in the hands of individual citizens of said State throughout said State is valued for taxation. 4. Whether the taxation of national bank shares in the State of Ohio in the year 1885, without permitting the shareholders to deduct from the assessed value of his shares the amount of his *bona fide* indebted-

ness existing on the Wednesday next preceding the second Monday in May, 1885, and on the day preceding the second Monday in April, 1885, is a discrimination forbidden by the act of Congress, the said shareholders not having deducted said *bona fide* indebtedness from any credits owned by them at either of said dates. 5. Whether the demand for such deduction, first made on the 17th day of
247 December, 1885, was sufficiently early to entitle complainant shareholders thereto. Whereupon, and on motion of the said defendant, by his counsel, that the points on which the disagreements have been made during the present term, be stated under the direction of the judges and certified under the seal of the court to the Supreme Court of the United States to be finally decided; it is ordered that the foregoing statement of the facts and the questions upon which the opinions of the judges were opposed, all of which are made under the direction of the judges, be, together with the record of this cause, certified to said Supreme Court according to the said request of the said defendant by his counsel, and pursuant to the statute in such case made and provided.

Dated this 22nd day of February, A. D. 1887.

HOWELL E. JACKSON,
Circuit Judge.
M. WELKER, *District Judge.*

Thereupon plaintiff offered in evidence the record of the case of The Mercantile National Bank of Cleveland *vs.* David H. Kimberly, as treasurer of Cuyahoga county, Ohio, contained in volume No. 16, of Chancery Records, pages 206 to 219, inclusive.

To which defendant objected as incompetent and irrelevant and as not pertaining to the issues made by the pleadings herein.

Said record is in the words and figures following, to wit:

April Term, 1888.

No. 4496.

At a stated term of the circuit court of the United States for the eastern division of the northern district of Ohio, begun and held in the city of Cleveland in said district on the first Tuesday in April, being the third day of said month in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and twelfth.

Present: The Honorable Howell E. Jackson, circuit judge, and the Honorable Martin Welker, district judge.

248 In the record and proceedings of said court then and there had, among other things appeared the following, to wit:

THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga Co., Ohio.

Be it remembered that heretofore, to wit, on the 16th day of December, A. D. 1886, there was filed in the clerk's office of said court,

a bill in the above-entitled cause, which bill is in the words and figures following, namely:

Bill.

In the Circuit Court of the United States of America within and for the Northern District of Ohio, Eastern Division, *ss:*

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio, Respondent.
} Bill.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

Your orator, The Mercantile National Bank of Cleveland, Ohio, respectfully represents that it is a national banking association, incorporated under and by virtue of the act of Congress, entitled "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3rd, 1864. And the amendments thereof, and is established and doing business in the city of Cleveland, in said northern district of Ohio, and brings this, its bill of complaint, against David H. Kimberly, as treasurer of Cuyahoga county, Ohio, a resident of said city of Cleveland, and a citizen of Ohio and of said northern
249 district, eastern division. And the grievance herein complained of arises and is exclusively founded on a violation by the defendant and others whose unlawful acts he is carrying into effect of rights of the shareholders of said national bank accorded them by section 5219 of the Revised Statutes of the United States, securing to said shareholders a restriction upon the taxation of the shares of stock of said bank by State authority, to that rate and limit assessed upon other moneyed capital in the hands of individual citizens of the State, as will herein fully appear. And, thereupon, your orator complains and says that it has a capital stock of $100,000.00, divided into 1,000 shares of one hundred dollars each, all of which is paid up, and certificates for the shares outstanding and owned by a large number of persons, some of whom are non-residents of said State of Ohio, and citizens of other States.

That, in accordance with section 2765 of the Revised Statutes of the State of Ohio, then in force, the cashier of your orator duly reported in duplicate to the auditor of said county, the resources and liabilities of said banking association, at the close of business on the Wednesday next preceding the second Monday in May, 1886, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share, as required by said section 2765. That, included in said return so made by said cashier, was the real estate owned by your orator at the valuation of $—; being the sum paid

by said bank therefor, which was already valued and equalized in conjunction with all the other real estate in the city of Cleveland by the proper board of equalization, at a taxable value of $—· and the tax thereon is otherwise and separately assessed and charged on the tax duplicate of said county, and paid by this complainant to the treasurer of said county, aside from the taxes set forth in this bill. That thereupon the said auditor pretended to proceed, as required by section 2766 of the Revised Statutes of Ohio, as amended March 9th, 1883, to fix the total value of such shares according to their true value in money, and fixed the same at $490,260.00, exclusive of the assessed value of its real estate; and made out and transmitted to the annual State board of equalization for incorporated banks a copy of the report so made by said cashier, together with the valuation of such shares as so fixed by said auditor; and your orator, from information and belief, alleges that the said county auditor for the purpose of more accurately determining and fixing the value of said shares, did meet with and consult the board
250 of equalization for the city of Cleveland, and the valuation by him reported to the State board of equalization was fixed and determined upon by said auditor, with the assistance and approval of said city board of equalization. That it is by law the duty of said city board of equalization to value and equalize for taxation all moneyed capital and personal property of every kind in the hands of individual citizens of the State of Ohio, resident in said city, and also to equalize the value of the said property with the valuation placed upon the real estate within said city for taxation, except only the capital, assets and shares of incorporated banks, that being the only property under the statute aforesaid referred to the said State board of equalization to be equalized; and the only property concerning which no mode whatever is provided by the statutes of Ohio whereby the valuation fixed thereon for taxation may be equalized with the valuation fixed on other moneyed capital in the hands of individual citizens of the said State, county and city, or with the valuation fixed on any other property, either real or personal; that said auditor placed a value upon said shares, which was in fact, and was known by him to be far in excess of the value fixed in said county on other moneyed capital in the hands of individual citizens of the State of Ohio, and of said city and county, and upon other real and personal property in said county; that the said State board of equalization, assuming and pretending to comply with the requirements of section 2808 and 2809 of the said Revised Statutes as amended March 9th, 1883, did examine the return aforesaid made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor, but that said city board of equalization did not examine, as required by law, any other returns made by said county auditor, to the State auditor, and the said board did then pretend to equalize said shares to their true value in money and fixed the valuation thereof at $638,429.03, exclusive of the assessed value of its real estate; that said State board of equalization, so called, knowingly and designedly did fix a much higher per cent. of value and assessment for taxation upon

the capital stock and shares of your orator than upon the capital and shares of other banks organized and existing under the laws of the State of Ohio, and which they pretended to equalize, a much higher rate and per cent. than was assessed upon other moneyed capital in the hands of citizens of the State of Ohio, much higher than that fixed upon other moneyed capital in the hands of such citizens in the said county of Cuyahoga and city of Cleveland, and
251 much higher than that fixed upon other property, real and personal in said county and city; that about four-fifths of the taxes assessed in said city of Cleveland, and upon the stockholders of your orator upon their shares in the said bank are assessed and paid for the purposes and uses of the said city of Cleveland, and about one-tenth for the purposes and uses of the said county of Cuyahoga, and only about one-tenth for the purposes and uses of the State of Ohio; that said State board of equalization did not equalize the value of said shares with the value of shares in other banks or with the value of other moneyed capital in the hands of citizens of the State of Ohio, county and city, but designedly and intentionally placed a much higher value thereon, which valuation so purposely equalized and determined by said State board of equalization, the auditor of said State did certify to the said auditor of Cuyahoga county, which valuation so certified, the said county auditor did enter upon the tax duplicate of said county for the year 1886; that afterwards said county auditor did enter upon the tax duplicate of said county for the year 1886, against your orator's stockholders, a tax on such valuation of such shares of the year 1886, amounting in the aggregate to $15,833.04, and upon a valuation as aforesaid of such shares of $638,429.03, exclusive of the assessed value of its real estate; that a large part, to wit, at least — of the capital stock of your orator, is invested in the obligations and securities of the United States, and in the lawful money thereof, and that said tax so levied and assessed, was and is, in violation of law, unauthorized and void; that the said tax was levied on a valuation twenty-eight per cent. higher than that fixed by the county auditor aforesaid, and about four-fifths thereof for the city of Cleveland, to answer the various purposes of that municipal body; that said duplicate, as required by law, with the said taxes charged thereon, has been by said county auditor delivered to said David H. Kimberly, treasurer of said county of Cuyahoga, to be by him collected from your orator by distraint, attachment or other legal proceedings, as provided in said statutes, who will immediately proceed to enforce the collection thereof, either by a sacrifice of such shares by enforcing the lien thereon created by said statutes, or otherwise, unless restrained by the injunction of this honorable court. And your orator further represents and shows unto your honors that in and by the second section of the twelfth article of the constitution of said State, it is provided that "laws shall be passed taxing by a uniform rule all moneys, credits, invest-
252 ments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money," and in and by the third section of the same article

that "all property employed in banking shall always bear a burden of taxation equal to that imposed upon the property of individuals," and by the fourth section of the thirteenth article, it is still further provided that, "The property of corporations now existing or hereafter created, shall forever be subject to taxation the same as the property of individuals." And, in and by the act of Congress and under which your orator is incorporated, "The right of the State to tax any owner of its shares is made subject to this condition, that the taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such State." But your orator further represents, that a very large amount of the moneyed capital in the hands of individual citizens of said State, county and city, is not included in the valuation of personal property for taxation, but is by the laws and statutes of said State, wholly exempt; that in the property so exempt from taxation *is* included the shares of capital stock of all corporations organized under the laws of Ohio, and that the value of this class of property alone owned and in the hands of individual citizens of said State, residing in said city and county, is valued for taxation at not to exceed 40 per centum of its true value in money, and at a much less percentage of its value in money than that fixed upon the shares of your orator; thus placing upon the shares of your orator according to the value fixed by the auditor of said county, an unjust and unequal burden of taxation as compared with other property and moneyed capital within said county and city. And your orator further represents that on the 15th day of December, A. D. 1886, on behalf of the shareholders owning such shares, it duly tendered to said treasurer and offered to pay for the taxes due Dec. 20, 1886, on said shares the sum of $4,479.27, and is still ready and willing to pay the same as well as the other half on the same basis of valuation in manner and at the times provided by law for the payment of taxes; on or before the 10th of June A. D. 1887, if the treasurer will receive it, or the court so orders, the amount so tendered and received being the one-half of the tax assessed against the shares of the stock of said bank, excepting and deducting therefrom the tax unlawfully levied on the increase of valuation made by said State board of equalization for incorporated banks, and excepting the further deduction of the taxes assessed against 400 shares owned
253 by James Barnett, 150 shares by William Bingham, 600 shares by Lelah Chamberlain, 600 shares by S. L. Mather, 25 shares by C. L. Murfey, 45 shares by L. A. Murfey, 210 shares by E. R. Perkins and 240 shares by Amos Townsend; which tax on said shares was by said defendant remitted on proof made to him that said owners on the day preceding the second Monday in April, 1886, and for — months continuously thereafter were respectively indebted in legal *bona fide* debts in an amount exceeding the value of valuation of said shares in excess of all other credits from which any portion of said indebtedness was or could have been deducted or taken, which tax on said shares was illegally levied because of the fact that the respective owners thereof were each severally indebted as aforesaid in legal *bona fide* debts in an amount exceeding

the value of said shares in excess of all other credits from which the same were or could have been taken, of all of which said respective shareholders made due proof to the listing and taxing officers of said city and county. Your orator avers and insists that the taxes so levied and assessed against it on account of its said shares of stock are unjust, illegal and void for the following among other reasons, viz:

First. That said tax is levied and assessed against your orator directly, and is in violation of the act of Congress under which your orator is incorporated.

Second. That the laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him, and requires him to list for taxation only the excess of credits over his indebtedness, and that such is the uniform practice throughout the State, and that under the laws of the same State the owner of capital stock of your orator is denied the right to deduct therefrom his indebtedness, but is required to list for taxation the whole number of shares owned by him, and not simply the excess of value of such shares over his indebtedness; and your orator insists that such discrimination results in the taxation of your orator's stock at a much greater rate than is assessed upon other moneyed capital in the hands of individual citizens of Ohio.

Third. Their property in this corporation is not valued in tax the same as property of individuals, and the burden of taxation upon it is very much greater, nor has any equality been preserved in the valuation for taxation of the shares of your orator as compared with other property in the locality where your orator is established; on the contrary, the valuation, in proportion to the value, is fully twice as much as that fixed upon other property, while the rate of levy is the same.

254 Fourth. The proceedings of said State board of equalization were irregular, illegal and of no binding obligation; for, while the said act proposes to give authority to examine and equalize the value of such shares as fixed by the county auditor, and as reported by him to the State auditor, yet, the said board did in fact examine and equalize as aforesaid, and not otherwise, the values of such shares fixed by the county auditor and returned by him to the State board of equalization; which value so fixed and returned, the State board were not authorized by law to examine, equalize or in any manner meddle with. While said act proposes to give authority to hear complaints and to equalize the value of shares as fixed by the county auditor, not increasing the aggregate more than 20 per cent. of such valuation, yet your orator avers that said board has proceeded without any complaint made against the valuation made by said auditor and without any notice to your orator or the other national banks located in the said city and county, or the shareholders thereof, to increase arbitrarily the valuation for taxation more than five hundred thousand dollars upon your orator and upon other national banks of the said city, and upon the shareholders thereof, without any hearing, or any opportunity for hearing, as is fairly required by said act.

Fifth. That the taxation of the shares of your orator's stock as aforesaid, is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of Ohio.

Sixth. The necessary effect of the proceedings had in the assessment and levy of the taxes standing against your orator and the shares thereof owned by its said shareholders has been to deprive your orator and such shareholders, both in the matter of valuation and equalization, of all benefit of the constitution and general laws of the State, by which only uniformity in the burdens of taxation upon all description of property could be secured, to take from them the security afforded by the limitations of the act of Congress, and to impose upon them such excessive exactions as to make the franchises granted by said act comparatively valueless. And your orator further represents that, if the shares of said stockholders are permitted to be sold under the lien created on them by section 2839 of the said Revised Statutes of Ohio, or otherwise, irreparable injury would not only be done to each of the shareholders, but also to your orator; and it would thereby be subjected to great loss of standing and credit and other injuries, for the redress of which the law
255 affords no remedies, and the franchises with which your orator is invested by the act of Congress as aforesaid, would not only be greatly impaired in value, but if such illegal exactions are to be continued and be persisted in, would be rendered nearly useless; that the disability imposed upon your orator to make transfers or pay dividends of or upon shares upon which such illegal tax remain- unpaid, would damage all the ordinary business of your orator and introduce confusion and uncertainty into its transactions, and the consequent loss of public confidence upon which its success depends; or, if your orator should pay such illegal tax and attempt to deduct the amount from dividends or other funds of the shareholders in its hands—which many of its shareholders have already prohibited its doing—it would be subjected to a great multiplicity of suits, brought by its separate shareholders for so doing; and in any event, a great number of suits would be rendered necessary to adjust the rights of all the parties, and your orator would be subjected to great expense and irreparable injury thereby. Inasmuch, therefore, as your orator is remediless by the strict rules of the common law and relievable only in equity, it prays that said David H. Kimberly, as treasurer of said Cuyahoga county, may be made party defendant to this bill of complaint; that the writ of subpœna may issue against him, and that he may answer the premises; that your honors will grant unto your orator your writ of injunction, strictly restraining and enjoining, during the pendency of this suit, the said David H. Kimberly, as treasurer of the said Cuyahoga county as aforesaid, from collecting or attempting to collect from your orator or said individual stockholders by distraint or otherwise, any of the said taxes as the same stand charged on said duplicate, and that upon the final hearing hereof, the said tax may be declared and decreed wholly illegal and void; or, if your honors should consider your orator not entitled to the relief aforesaid, that the said respondent may be decreed to receive in full of said taxes

the sum so tendered by your orator and be perpetually enjoined from collecting or attempting to collect the balance of said taxes so illegally assessed, and for such other and further relief in the premises as equity and good conscience require.

BOYNTON & HALE,
Solicitors for Complainant.

256 UNITED STATES OF AMERICA, }
Northern District of Ohio. }

Be it remembered, that on this 16th day of December, 1886, personally came before me C. L. Murfey, who, being by me duly sworn, deposes and says that he is the cashier of the complainant in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; that all the allegations and statements therein contained as derived from the information of others, he believes to be true, and all other allegations and statements therein made are true in substance and in fact.

C. L. MURFEY.

Sworn to before me and signed in my presence this 16th day of December, 1886.

NORTON T. HORR, [SEAL.]
Notary Public.

And afterwards, to wit, on the 20th day of December, A. D. 1886, the following subpœna was filed in this cause in said court, viz:

Subpœna.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division, } *ss:*

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon David H. Kimberly, as treasurer of Cuyahoga county, if he be found in your district, to be and appear in the circuit court of the United States, within and for the district aforesaid, at Cleveland, on the first Monday in March next, to answer a certain bill in chancery filed and exhibited in the said court against him by the Mercantile National Bank of Cleveland. Hereof he is not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witnessed, the Honorable Morrison R. Waite, Chief Justice of the United States, this 16th day of December, A. D. 1886, and in the one hundred and eleventh year of the Independence of the United States of America.

A. J. RICKS, *Clerk,*
By O. C. BEATTY,
Deputy Clerk. [SEAL.]

Memorandum.

The said defendant is required to enter his appearance in this suit in the clerk's office of said court, on or before the first
257 Monday of February, 1887, otherwise the said bill may be taken *pro confesso*.

A. J. RICKS, *Clerk.*

NORTHERN DISTRICT OF OHIO, *ss:*

On the 18th day of Dec., 1886, at Cleveland, Ohio, I delivered to the within-named David H. Kimberly, as treasurer of Cuyahoga county, Ohio, a true and duly certified copy of this writ.

W. S. GOODSPEED,
U. S. Marshal,
By JOHN ODELL, *Deputy.*

(Endorsed:) Returnable Feb. 7, 1887. Rule day for appearance Feb. 7, 1887. Rule day for answer March 7, 1887. Returned and filed Dec. 20th, 1886. A. J. Ricks, clerk.

And afterwards, to wit, on the 16th day of December, A. D. 1886, the following proceedings were had in this cause in said court, viz:

Preliminary Injunction.

United States Circuit Court for the Northern District of Ohio, Eastern Division.

MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio.

This day came the complainant, the defendant not appearing under notice served upon him, and thereupon the notice for a preliminary injunction in said cause came on to be heard, and it is ordered that the respondent be and he is hereby enjoined from collecting the excessive taxes, which it is alleged in the bill he threatens to collect, until further order of this court. Said defendant is also enjoined from serving notice as such treasurer, forbidding the officers of said bank from making transfers of its shares or payment of dividends or other funds belonging to said shareholders. It is ordered that complainant execute this bond herein in the sum of $10,000.00, conditioned according to law, to indemnify said
258 defendant against any damage that may be awarded by the court in the premises. Said bond and sureties to be approved by the clerk of said court.

Done at chambers, in the city of Toledo, in said district, this 16th day of December, A. D. 1886.

M. WELKER,
District Judge of the United States for said District.

And afterwards, to wit, on the 17th day of December, A. D. 1886, the following bond was filed in this cause in said court, viz:

Injunction Bond.

Know all men by these presents, that we, The Mercantile National Bank and Truman P. Handy, are held and firmly bound unto David H. Kimberly, as treasurer of Cuyahoga county, Ohio, in the sum of ten thousand dollars, to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 18th day of December, A. D. 1886.

The condition of this obligation is such that whereas, the said The Mercantile National Bank, citizen of the State of Ohio, has filed in the circuit court of the United States for the northern district of Ohio, a bill in chancery against said David H. Kimberly, as treasurer of Cuyahoga county, Ohio, and *have* obtained an allowance of an injunction, as prayed for in said bill from the Honorable Martin Welker, one of the judges of said court. Now, if the said The Mercantile National Bank of Cleveland, Ohio, and Truman P. Handy shall abide the decision of said court in said cause and pay all moneys and costs which shall be adjudged against them in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

THE MERCANTILE NATIONAL BANK
OF CLEVELAND,
By T. P. HANDY, *President.* [SEAL.]
TRUMAN P. HANDY. [SEAL.]

(Endorsed:) Approved and filed Dec. 17, 1886. A. J. Ricks, clerk.

And afterward, to wit, on the 20th day of December, A. D. 1886, the following copy of restraining order was filed in this cause in said court, viz:

259 *Restraining Order.*

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division. }

In the Circuit Court of the United States for said District and Division.

Be it remembered, that on a hearing before the Honorable Martin Welker, one of the judges of said court, sitting at chambers on the 16th day of December, A. D. 1886, the following order was made and signed and ordered to be entered upon the records of the court, to wit:

THE MERCANTILE NATIONAL BANK OF Cleveland
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio.
} Chancery. No. 4496.

This day came the complainant, the defendant not appearing under notice served upon him, and thereupon the motion for a preliminary injunction in said cause came on to be heard, and it is ordered that defendant be, and is hereby enjoined from collecting the excessive taxes, which it is alleged in the bill he threatens to collect, until further order of this court. Said defendant is also enjoined from serving notice as such treasurer, forbidding the officers of said bank from making transfers of its shares or payment of dividends or other funds belonging to said shareholders. It is ordered that complainant execute its bond herein in the sum of $10,000, conditioned according to law, to indemnify said defendant against any damage that may be awarded by the court in the premises. Said bond and sureties to be approved by the clerk of said court.

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, } *ss:*

I, Augustus J. Ricks, clerk of the circuit court of the United States within and for said district, do hereby certify that the within is a true copy of an order entered upon the chancery order book of said court, in the case therein entitled; that I have compared the same with the original entry of said order, and it is a true transcript therefrom.

Witness my official signature and the seal of said court at
260 Cleveland, in said district, this 17th day of December, A. D. 1886, and in the one hundred and eleventh year of the Independence of the United States of America.

AUGUSTUS J. RICKS, *Clerk,*
By O. C. BEATTY, *Deputy Clerk.* [SEAL.]

NORTHERN DISTRICT OF OHIO, *ss:*

On the 18th day of December, 1886, at Cleveland, Ohio, I delivered to the within David H. Kimberly, as treasurer of Cuyahoga county, Ohio, a true and duly certified copy of this writ.

W. T. GOODSPEED,
U. S. Marshal,
By JOHN ODELL, *Deputy.*

And afterwards, to wit, on Wednesday, the 23rd day of March, A. D. 1887, the following decree was entered in this cause in said court, viz:

Order pro Confesso.

THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio.

It appearing to the court that said defendant has failed to plead, answer or demur to complainant's bill, and the time fixed therefor having passed, it is ordered upon motion of said complainant that the allegations of said bill be taken as true and confessed by said defendant, and that an order *pro confesso* be ordered against them.

And afterwards, to wit, on Wednesday the 27th day of April, A. D. 1887, the following decree was entered in this cause in said court, viz:

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio.
Decree.

This cause having come *so* to be heard before the judgment
261 *pro confesso* ordered more than thirty days prior to this date, and the defendant still failing to plead, answer or demur, it is ordered that said decree be made absolute. And this cause having come on to be heard further upon all the allegations of the bill so confessed, and it appearing to the court that the amount of taxes and assessments admitted in said bill to be due December 20, 1886, to wit, the sum of four thousand four hundred and seventy-nine dollars and twenty-seven cents, being one-half of the taxes properly assessed for the year 1886 on the capital stock of said bank, has been paid by said respondent and said respondent is ready and willing to pay a like amount for the last half of said taxes falling due June 20, 1887, it is therefore ordered, adjudged and decreed that said respondent and his successors in office be forever enjoined from proceeding or attempting to collect any other or further sum on account of the first half of said taxes, and also from collecting or attempting to collect on account of the last half of said taxes to become due June 20, 1887, any portion except the sum of $4,479.26. It is ordered, adjudged and decreed that said respondent and his successors in office pay the costs of this suit to be taxed at $59.37, for which it is ordered that execution may issue as upon judgments at law.

And afterwards, to wit. on the 17th day of May, A. D. 1887, the following motion was filed in this cause in said court, viz:

In the Circuit Court for the Northern District of Ohio.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant,
vs.
D. H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio, Defendant.

Motion to Vacate Judgment and Decree.

Now comes the said defendant and moves the court to vacate and set aside the judgment *pro confesso* and the decree heretofore rendered in this action for the reason that a certain other action by said complainant against the treasurer of Cuyahoga county, involving the same questions by law as are presented in this cause
262 was at this term of said court certified to the Supreme Court of the United States on a certificate of division of opinion by the judges trying the same, and in view of that fact it was thereupon agreed by the counsel of said complainant and of said defendant that this action remain on the docket undisposed of until the termination of said action in the Supreme Court, and by reason of such agreement and relying thereon, the counsel for defendant did not file an answer herein within the rule day.

HADDEN, DISSETTE & COLLISTER,
JAMES LAWRENCE,
CLARENCE BROWN,
Solicitors for Defendant.

STATE OF OHIO, *Cuyahoga County*, } *ss:*

T. K. Dissette, one of the counsel for the above-named defendant, being duly sworn, says that he made an agreement with the counsel for complainant set forth in the foregoing motion; that the facts stated in said motion are true as he believes; that in the opinion of affiant the defendant has a good defense to the bill of complaint herein.

——.

Sworn to before me by the said T. K. Dissette and by him subscribed in my presence this 17th day of May, 1887.

——.

And afterwards, to wit, on the 28th day of June, A. D. 1887, the following order was filed in this cause in said court, viz:

Decree to Set Aside and Leave to Answer.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio.

In this cause it is ordered that the final decree heretofore rendered herein be set aside and also the decree *pro confesso*, and leave is hereby given to the defendant to answer in ten days.

And afterwards, to wit, on the 1st day of July, A. D. 1887, the following answer was filed in this cause in said court, viz:

263 *Answer.*

United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio, Respondent.
} In Equity. No. 4496.

The answer of David H. Kimberly, treasurer of Cuyahoga county, Ohio, respondent, to the bill of complaint of The Mercantile National Bank of Cleveland, Ohio, complainant.

This respondent now and at all times hereafter reserving all manner of benefit and advantage to himself of exception to many errors and insufficiencies in complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this respondent is advised is material for him to make answer unto, this respondent saith; he admits that said complainant is a duly incorporated banking association located and doing business in Cleveland, Cuyahoga county, Ohio, and that he is a citizen of said county, and is the duly elected and qualified treasurer of said county and is acting as such, and as such treasurer is charged with the collection of all taxes assessed and placed on the tax duplicate of said county by the auditor thereof, and by him delivered to this respondent for collection and that he intends, and unless restrained by the injunction of this honorable court, will be required by law to proceed to collect the taxes levied against complainant and its shareholders by the use of all needful lawful process. This respondent admits that complainant has its capital stock and that the same is divided and held as in its said bill set forth. This respondent admits that in pretended compliance with section 2765 of the Revised Statutes of Ohio, complainant's cashier made a return to the auditor of Cuyahoga county, Ohio, purporting to exhibit the entire resources and liabilities of the complainant at the close of business hours on the Wednesday next preceding the second Monday of May, 1886, together with a statement of the name and residence of stockholders, the number of shares held by each and the par value of each share, and that included therein was the real estate of complainant which had been valued and assessed as in
264 complainant's bill alleged; and respondent avers that thereupon the auditor of said Cuyahoga county fixed the total value of the shares of the complainant bank, after deducting the value of the real estate included in said statement of resources, as the same stood on the duplicate, at the sum named in the complainant's bill, and he avers that said valuation was not greater than the true value in money of said shares and was not greater

than the valuation of other moneyed capital in the hands of individual citizens of said State of Ohio, and he denies that the valuation of said shares should have been at any less sum. He denies that such valuation was at an excess of the valuation of other moneyed capital in the hands of individual citizens of said State or of said city of Cleveland or county of Cuyahoga. And this respondent says that he is informed and believes that at the close of business on said Wednesday next preceding said second Monday in May, 1886, and for more than two months next prior thereto, the true value in money of all the shares of said complainant bank was, and during all said period had been not less than one million, three hundred and eighty thousand dollars ($1,380,000.00) and of each of said shares not less than one hundred and thirty-eight dollars ($138.00); that the return made by the cashier of said bank to said auditor, as in said bill of complaint alleged, did not correctly exhibit the value of the assets of said bank, and that large amounts of valuable assets and property were omitted from said return, and that large amounts of evidences of indebtedness then part due, and other assets held and owned by said bank did not appear in said return at their true value. And the same appeared upon the books of said complainant bank and in said return, if at all, as of little or no value, though in fact, the same was of great value and a large proportion thereof was worth its full face value and was fully secured. By reason of the errors and omissions and inaccuracies in said return there was charged against the shareholders of said complainant bank a very much less amount of taxes for the year 1886 than ought to have been charged, and the said shares were assessed and valued for taxation at a very much smaller amount than their true value in money and at a very much smaller amount than real and personal property generally in Ohio, and particularly than other moneyed capital in the hands of individual citizens in the State of Ohio, and in said city and county wherein complainant is located.

He admits that said auditor of Cuyahoga county certified to the State board of equalization for incorporated banks,
265 the valuation by him placed upon the shares of the complainant bank. He denies that said auditor, for the purpose of more accurately determining and fixing the value of said shares, met with and consulted the board of equalization of the city of Cleveland or that the valuation by him reported to the State board of equalization was fixed upon and determined by said auditor with the assistance and approval of said city board of equalization. This respondent denies that the said action of said State board of equalization was in any respect illegal, unauthorized or oppressive; denies that said board disregarded the question whether its action placed the property of complainant at a higher valuation than the property of moneyed capital in the hands of individual citizens of said State; denies that said board disregarded any question of equality between the property of any corporations or individuals; denies that said board arbitrarily or otherwise, adopted any valuation, irrespective of the true value in money of the property so valued, without regard to the assessed value of any other

property. Denies that any discrimination was made against national banks; denies that the result of the valuations made by said auditor of Cuyahoga county and said board was to make a discrimination against complainant; denies that any discrimination against national banks including complainant, exists or has existed; denies that the average valuation for taxation of State banks is at any lower *complainant than upon the capital and shares of other* percentage of true value than the valuation for taxation of the shares of said complainant bank; and denies that the valuation for taxation of the State banks in said Cuyahoga county is at any lower percentage of true value, than the valuation for taxation of the shares of said complainant bank; and avers that if the shares of any State bank were valued for taxation at any lower percentage of their true value than the shares of the complainant bank were so valued, it was without the knowledge of the true value on the part of the said State board and of the auditor of the county in which said bank was located; he denies that said State board of equalization knowingly and designedly fixed a higher per cent. of value and assessment for taxation upon the capital stock and shares of complainant than upon the capital and shares of other banks organized and existing under the laws of Ohio; and denies that it fixed a much higher rate, or any higher rate per cent. of valuation than was fixed upon other moneyed capital in the hands of individual citizens of said State, or in the hands of the citizens of said county of Cuyahoga and city of Cleveland.

266 This respondent admits that said State board of equalization did examine the return so as aforesaid made by complainant's cashier to said county auditor and the valuation of such shares as fixed by said county auditor, and he admits that said State board of equalization fixed the value of shares of complainant's bank at the amount named in said complainant's bill. This respondent avers that said State board for the equalization of the shares of incorporated banks, consisting of the governor, the auditor of State and the attorney general, did meet on the third day of June, A. D. 1886, at the office of said auditor of State at Columbus, and having before them the statements and returns of the complainant's cashier and the valuation of complainant's shares fixed by said county auditor with like return and valuation of all the incorporated banks within the State of Ohio, and having full knowledge of the value of said shares irrespective of the return of said cashier, and of the value so fixed by said auditor, proceeded to fix the value of complainant's shares and equalize the same with the value of the shares of all other incorporated banks, both national and State, within the State of Ohio; that said board heard all complaints made against the valuations as fixed by the several county auditors throughout the State of Ohio and valued and equalized the valuation of the shares of all the incorporated banks within said State according to the rule prescribed by the laws of said State for valuing and equalizing the value of moneyed capital in the hands of individual citizens of said State; and in acting upon the shares of said complainant for the purpose of fixing their value and of

equalizing the same with that of other moneyed capital and with the shares of other national banks, said State board of equalization was governed by the same rules and adopted and used the same methods as those by which it was governed and which it used in equalizing the shares of all other incorporated banks for taxation, and the same as governed and were used by all other equalizing boards and all other officers of said State, county and city in the valuing and equalizing of all moneyed capital in the hands of individual citizens of said State and of all shares of stock in incorporated and unincorporated banks in said State, both State and national.

This respondent says that said State board of equalization did not, nor was it by law required to limit itself in fixing the valuation of said shares to the valuation thereof fixed by the auditor of said county of Cuyahoga, nor was it governed wholly by the value
267 as fixed by said city board of equalization or said auditor upon other moneyed capital in the hands of individual citizens or unincorporated banks in said county of Cuyahoga and city of Cleveland; but said State board being fully advised as to the valuation fixed upon the shares of other national banks and State banks, incorporated and unincorporated, throughout the State of Ohio, and upon other moneyed capital in the hands of individual citizens throughout said State, did fix and equalize the value of said complainant's shares upon the same basis as all other bank shares and other moneyed capital throughout the entire State of Ohio were fixed and valued.

This respondent further avers that by reason of the fact that said return of said cashier did not contain a full and complete statement of the assets of said bank as hereinbefore alleged, said shares were in truth and in fact valued by said State board of equalization at much less than their true value in money and at a less rate per cent. than other moneyed capital in the hands of individual citizens of said State. Respondent avers that said State board was in session at the capitol of the State for a long time, to wit, for the period of about six weeks, and that neither the said complainant nor its cashier or other officers nor any of its shareholders, nor any person in its or their behalf, brought before said board or presented to it any complaint or any statement of the several alleged matters and things now set forth in its bill of complaint. This respondent admits that after the value of said shares had been so equalized and determined by the State board of equalization, the auditor of said State certified to the auditor of Cuyahoga county the value so fixed, which valuation was thereupon entered upon the tax duplicate of said county for the year 1886 and the tax was thereafter entered against the stockholders of complainant on the valuation so fixed, and amounted in the aggregate to the sum set forth in complainant's bill.

This respondent denies that a very large amount, or any amount of the moneyed capital in the hands of individual citizens of said State, county or city, is not included in the valuation of personal property for taxation; denies that it is by the laws and statutes of

said State wholly exempt; denies that the shares of the capital stock of all corporations organized under the laws of Ohio are so exempt or that the value of such property, or of any property, in the hands of individual citizens of said State residing in said city and county was valued for taxation at not to exceed 40 per centum of its true value in money, or at a less percentage of its value
268 in money than the value fixed upon the shares of complainant; and it denies that if such property except the moneyed capital in the hands of individual citizens is so exempt, or is so valued, that it affords any ground for relief on account of the valuation fixed upon complainant's shares or that thereby any injustice or unequal or unlawful burden was placed upon the shares of complainant in violation of the laws of the United States. And this respondent avers that the shares in said complainant's bank were not and are not by law required to be valued and equalized with reference to the value fixed upon all property, real and personal, within the State of Ohio, or all property, real or personal, within said county of Cuyahoga or city of Cleveland, but that the same is required to be so valued and equalized that the taxation thereon shall not be at a greater rate than shall be assessed upon other moneyed capital in the hands of individual citizens of such States, and that within the meaning of said act of Congress the term moneyed capital means and embraces only such capital as is employed in banking and the capital employed by individuals when the object of their business is the making of profit by the use of their moneyed capital as money. And respondent denies that in all or any of said proceedings by said auditor of Cuyahoga county and said State board of equalization, or either of them, was there any violation whatever of the act of Congress of the United States fixing the terms upon which the capital and property of national banks shall be subject to taxation by the State authorities; and denies that there was any violation whatever of the protection afforded to complainant or its shareholders by said act of Congress. This respondent denies that for the reasons set forth in complainant's bill, or for any other reason, the taxes so levied and assessed against complainant on account of its said shares of stock are unjust, illegal and void; denies that complainant could have no relief from overvaluation, if any there was which respondent denies; denies that complainant is deprived of any of the conditions intended for its protection by the acts of Congress; and denies that it was compelled to seek relief from judicial tribunals, and avers that full, complete and adequate relief from all overvaluation is afforded by the statutes of the State, and it was the duty of the complainant to make known to the said State board its objections, if any it had, to the valuation fixed by the said auditor, and to the action of said State board in equalizing the value of complainant's shares. This respondent denies that it is the uniform practice throughout the State of Ohio to
269 authorize and permit the owner of credits to deduct therefrom all debts owing by him, or to require him to list for taxation only the excess of credits over his indebtedness, and he denies that

under the laws of said State, the shareholders of complainant are denied any right which is accorded to the owner or holder of other moneyed capital in the hands of individual citizens of said State; he denies that there is any discrimination in that regard against the shareholders of complainant; and he denies that complainant's shareholders, or any of them, were indebted as in the bill alleged, or that they were entitled to deduct any such indebtedness from their said shares of stock.

Further answering, this respondent says that the tenor and effect of the constitution and statutes of the State of Ohio and the statutes of the United States in respect to taxation, which are but partially and imperfectly set forth in complainant's bill of complaint, will more fully appear from the said statutes to which this respondent prays leave to refer.

And this respondent further answering, denies that the said complainant is entitled to the relief or any part thereof in its said bill of complaint demanded, and says that any other matter, cause or thing, in the said complainant's bill of complaint contained, material or necessary for this respondent to make answer unto and not herein and hereby wholly and sufficiently answered, confessed, traversed and avoided or denied, is not true to the knowledge or belief of this respondent, all of which matters and things this defendant is ready and willing to maintain and prove as this honorable court shall direct, and humbly prays that the provisional injunction heretofore granted herein, may be dissolved and that he may be hence dismissed with his reasonable costs and charges in this behalf sustained, and may be granted all other and further relief to which he may be entitled.

HADDEN, DISSETTE & COLLISTER,
Solicitors for Respondent.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

David H. Kimberly, being duly sworn, says that he is the respondent in the foregoing answer; that he has read the same and knows the contents thereof, and that the same is true, except as to the matters and things therein stated to be on information and belief, and as to them he believes it to be true.

D. H. KIMBERLY.

270 Subscribed by the said David H. Kimberly in my presence and by him sworn to before me this 1st day of July, 1887.

FRANCIS O. BREY, [SEAL.]
Notary Public.

And afterwards, to wit, on the 19th day of July, A. D. 1887, the following replication was filed in this cause in said court, viz:

Replication.

United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Complainant,
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Respondent.
} No. 4496. Equity.

Replication of complainant to the answer of respondent.

This repliant, saving and reserving unto himself now and at all times hereafter, all and all manner or benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto, says that it will aver, maintain and prove its said bill of complaint to be true, certain and sufficient in law to be answered unto and that the said answer of the said respondent is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters, and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

BOYNTON & HALE,
Solicitors for Plaintiff.

And afterwards, to wit, on the 26th day of July, A. D. 1887, the following stipulation was filed in this cause in said court, viz:

271 *Stipulation.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE NATIONAL BANK CASES OF CLEVELAND
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio.

It is stipulated and agreed between counsel of the national banks in the several cases now pending in said court, wherein The First National Bank, The Commercial National Bank, The Mercantile National Bank, The National Bank of Commerce, The Union National Bank, The Cleveland National Bank, The Ohio National Bank, and The National City Bank are respectively complainants, and said David H. Kimberly, as treasurer as aforesaid, is respondent; that the judgments heretofore entered in said cases, whether *pro confesso* or final, shall be vacated in said cases and said cases

stand on the docket of said court without further action until the case of The Mercantile National Bank *vs.* Horatio N. Whitbeck, as treasurer of Cuyahoga county, recently carried to the Supreme Court of the United States is decided by that court; and if the judgment in said case shall be affirmed by the Supreme Court of the United States, the injunction granted in each of the above-named cases shall be made perpetual at the costs of the defendant. It being hereby agreed by counsel with a view to avoid the expense of taking testimony in said cases, in case the same be tried, that the same rule of valuation found by said circuit court to prevail in Cuyahoga county in 1885, also prevailed in 1886, as respects the taxation of moneyed capital of all kinds, whether in the hands of individual citizens or otherwise.

Dated this 22nd day of June, A. D. 1887.

BOYNTON & HALE,
Solicitors for said Banks.
HADDEN, DISSETTE & COLLISTER,
Attorneys for Defendant.

272 And afterwards, to wit, on Monday, the 14th day of May, being a day of the April term, A. D. 1888, of said court, the following decree was entered in this cause in said court, viz:

Decree.

At this term the parties appeared by their solicitors, and this cause came on for hearing upon the bill, answer, replication and stipulation, and the court being fully advised in the premises, do find the allegations of the complainant's bill to be true and the equities of the case with the said complainant. And it appearing to the court that the amount admitted in said bill to be due to said respondent has, pursuant to a former order of this court, been paid by said complainant to the respondent and by the latter received, it is therefore ordered, adjudged and decreed that said respondent or his successors in office be forever enjoined from proceeding or attempting to collect and from collecting any part or portion of said tax or assessment remaining unpaid, to wit, $6,937.96. And it is further ordered, adjudged and decreed that said respondent or his successors in office pay the costs of this suit taxed at $159.37, for which it is ordered that execution may issue as upon judgments at law.

Thereupon plaintiff offered in evidence the record of the case of The Mercantile National Bank of Cleveland, Ohio, against David H. Kimberly, as treasurer of Cuyahoga county, Ohio, contained in volume No. 17, of Chancery Records, pages 48 to 61, inclusive.

To which defendant objected as incompetent and irrelevant and as not pertaining to the issues made by the pleadings herein.

Said record is in the words and figures following, to wit:

April Term, A. D. 1889.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } *ss:*

At a stated term of the circuit court of the United States, within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the second day of said month in the year of our Lord one thousand eight hundred and eighty-nine and of the Independence of the United States of America the one hun red and fourteenth year.

273 Present: The Honorable Augustus J. Ricks, district judge.

Among the proceedings then and there had were the following, to wit:

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, *vs.* DAVID H. KIMBERLY, Treas. } Chancery. No. 4648.

Be it remembered that heretofore, to wit, on Dec. 15, 1888, a bill was filed in this cause and which is in the words and figures following, to wit:

In the Circuit Court of the United States of America within and for the Northern District of Ohio, Eastern Division, *ss:*

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant, *vs.* DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio, Respondent.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division:

Your orator, The Mercantile National Bank of Cleveland, O., respectfully represents that it is a national banking association incorporated under and by virtue of the act of Congress entitled, "An act to provide for a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864, and the amendments thereof, and is established and doing business in the city of Cleveland, in said northern district of Ohio, brings this, its bill of complaint against David H. Kimberly, as treasurer of Cuyahoga county, Ohio, a resident of said city of Cleveland and a citizen of Ohio, and of said northern district, eastern division; and the grievance herein complained of arises and is exclusively founded on a violation by the de-

274 fendant and others whose unlawful acts he is carrying into effect of rights of the shareholders of said national bank accorded them by section 5219 of the Revised Statutes of the United States, securing to said shareholders a restriction upon the taxation

of the shares of stock of said bank by State authority, to that rate and limit assessed upon other moneyed capital in the hands of individual citizens of the State, as will herein fully appear. And thereupon, your orator complains and says that it has a capital stock of one million dollars ($1,000,000.00), divided into ten thousand shares of one hundred dollars each, all of which is paid upon and certified for shares outstanding and owned by a large number of persons, some of whom are now residents of said State of Ohio, and citizens of other States, that in accordance with section 2765 of the Revised Statutes of the State of Ohio, then in force, the cashier of your orator duly reported, in duplicate to the auditor of said county the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday in May, 1888, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share as required by said section 2765; that included in said return so made by said cashier, was the real estate owned by your orator at a valuation of $149,260.00, being the sum paid by said bank therefor, which was already valued and equalized in conjunction with all the other real estate in the city of Cleveland by the proper board of equalization at a taxable value of $149,260.00; and the tax thereon is otherwise and separately assessed and charged on the tax duplicate of said county and paid by this complainant to the treasurer of said county aside from the taxes set forth in this bill; and thereupon the said auditor pretended to proceed as required by section 2766 of the Revised Statutes of Ohio, as amended March 9th, 1883, to fix the total value of such shares according to their value in money and fixed the same at $679,000.00, "exclusive of the assessed value of its real estate and made out and transmitted to the annual State board of equalization for incorporated banks a copy of the report so made by the said cashier together with the valuation of such shares as so fixed by said auditor; that the value was fixed by said auditor, was in fact, and was known by him to be far in excess of the value fixed in said county upon other moneyed capital of like amount in the hands of individual citizens of the State of Ohio, and of said city and county, to an amount of over $148,000.00; that the said State board of equalization, as-
275 suming and pretending to comply with the requirements of sections 2808 and 2809 of said Revised Statutes, as amended March 9th, 1883, did examine *and* return aforesaid made by cashier to said county auditor and the value of such shares as fixed by said county auditor; but that said State board of equalization did not examine as required by law any other returns made by said county auditor to the State auditor and the said board did then pretend to equalize said shares to their true value in money and fixed the valuation thereof at $679,000.00, being the same value fixed by said auditor exclusive of the assessed value of its real estate; that said State board of equalization, so called, and said auditor knowingly and designedly did fix a much higher per cent. of value and assessment for taxation upon the capital stock and shares of your orator than upon the capital and shares of other banks organized and existing

under the laws of the State of Ohio, and which they pretended to equalize, and much higher rate and per cent. than was assessed upon other moneyed capital in the hands of such citizens in the said county of Cuyahoga and city of Cleveland, and much higher than that fixed on other property real and personal in said county and city, that about four-fifths of the taxes assessed in said city of Cleveland, and upon the stockholders of your orator upon their shares in the said bank are assessed and paid for the purposes and uses of the said city of Cleveland, and about one-tenth for the purposes and uses of the said county of Cuyahoga, and only about one-tenth for the purposes and uses of the State of Ohio; that neither said auditor nor said State board of equalization did fix or equalize the value of said shares with the value of shares in other banks or with the value of the moneyed capital in the hands of individual citizens of the State of Ohio, county or city, but designedly and intentionally placed the excessive value aforesaid thereon, which valuation so purposely equalized, fixed and determined by said State board of equalization, the auditor of said State did certify to the said auditor of Cuyahoga county, and which excessive valuation so certified, the said county auditor did enter upon the tax duplicate of said county for the year 1888; that afterwards said county auditor did enter upon the tax duplicate of said county for the year 1888 against your orator, a tax on such valuation of such shares for the year 1888, amounting in the aggregate to $19,215.70, and upon a valuation as aforesaid of such shares of $679,000.00, exclusive of the assessed value of its real estate; that a large part of the capital stock of your orator is
276 invested in the obligations and securities of the United States and in the lawful money thereof, and that said tax so levied and assessed was, and is, in violation of law, unauthorized and void; that said tax was levied on a valuation over 27 per cent. higher than that authorized by law, and about four-fifths thereof for the city of Cleveland, to answer the various purposes of that municipal body; that said duplicate as required by law, with the said taxes charged thereon, has been by said county auditor delivered to said David H. Kimberly, as treasurer of said county of Cuyahoga to be by him collected from your orator by distraint, attachment or other legal proceedings as provided in said statutes—who will immediately proceed to enforce the collection thereof, either by a sacrifice of such shares by enforcing the lien thereon created by said statutes, or otherwise, unless restrained by the injunction of this honorable court. And your orator further represents and shows unto your honors that in and by the second section of the twelfth article of the constitution of said statutes it is provided that "laws shall be passed taxing by uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also real and personal property, according to its true value in money," and in and by the third section of the same article that, "all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals;" and by the fourth section of the thirteenth article, it is still further provided that "the property of corporations now existing or hereafter created, shall forever

be subject to taxation the same as property of individuals;" and in and by the act of Congress under which your orator is incorporated, the right of the State to tax any owners of its shares is made subject to this condition: "That the taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such State. But your orator further represents that a very large amount of the moneyed capital in the hands of individual citizens of said State, county and city, is not included in the valuation of personal property for taxation, but is by the law and statutes of said State wholly exempt, that in the property so exempt from taxation *is* included the shares of the capital stock of all corporations organized under the laws of the State of Ohio and that the value of this class of property alone, owned and in the hands of individual citizens of said State, residing in said city and county, is valued for
277 taxation at not to exceed 40 per centum of its true value in money, and at a much less percentage of its value in money than that fixed upon the shares of your orator; thus placing upon the shares of your orator according to the value fixed by the auditor of said county an unjust and unequal burden of taxation as compared with other property and moneyed capital within said county and city. And your orator further represents that on the 14th day of December, A. D. 1888, on behalf of the shareholders owning such shares, it duly tendered to said treasurer and offered to pay for the taxes due Dec. 20th, 1888, on said shares the sum of $5,201.70, and is still ready and willing to pay the same as well as the other half on the same basis of valuation in manner and at the times provided by law for the payment of taxes, to wit, on or before the 20th of June, A. D. 1889, if the treasurer will receive it or the court so orders the amount so tendered is the one-half of the taxes assessed against the shares of the stock of said bank excepting and deducting therefrom the tax unlawfully levied on said excessive valuation by said auditor, and excepting the further deduction of the tax assessed against 200 shares owned by J. V. Painter; 50 shares by J. B. Zorke; 240 shares by Amos Townsend; 600 shares by Selah Chamberlain; 512 shares by E. R. Perkins; 40 shares by L. A. Murfey; 400 shares by L. A. Mather; 150 shares by W. Bingham; 560 shares by T. P. Handy; 50 shares by Mary H. Severance; 70 shares by J. Parmelee; 50 shares by L. H. Mather; 50 shares by T. A. Kelly; 50 shares by M. G. Mather; and 50 shares by C. L. Murfey. The owners of said shares on the day preceding the second Monday in April, 1888, and for months continuously thereafter were indebted respectively in legal, *bona fide* debts in an amount exceeding the valuation or value of said shares in excess of their credits from which any portion of said indebtedness was or could have been deducted or taken, which tax on said shares was illegally levied because of the fact that the respective owners thereof were each indebted as aforesaid in legal, *bona fide* debts in an amount exceeding the value of said shares in excess of all other credits, from which the same were and would have been taken, all of which said respective shareholders made due proof to the listing and taxing officers of said city and county at the time the cashier presented his state-

ment of the resources and liabilities of said bank; yet said defendant refused and still refuses to allow said deduction to be made, but insists on the payment of the tax placed on said duplicate
278 respective of the same; both said auditor and said State board of equalization refused and omitted to lessen and diminish the aggregate valuation of said bank shares by reason of said claims for deduction and thereby wholly refused to regard said act of Congress allowing said deduction to be made. Said defendant refused to receive the taxes so tendered unless *paid* orator would also at the same time pay the whole of the taxes so illegally assessed against said shareholders or on said shares. Your orator avers and insists that the taxes so levied, and assessed against it on account of its shares of stock are unjust, illegal and void for the following, among other reasons, to wit: First, that said tax is levied and assessed against your orator directly, and is in violation *to* the act of Congress under which your orator is incorporated. Second, that laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him and requires him to list for taxation only the excess of credits over his indebtedness and that such is the uniform practice throughout the State, and that under the laws of the same State the owner of capital stock of your orator is denied the right to deduct therefrom his indebtedness, but is required to list for taxation the whole number of shares owned by him and not simply the excess value of such shares over his indebtedness, and your orator insists that such discrimination results in the taxation of your orator's stock at a much greater rate than is assessed upon other moneyed capital in the hands of individual citizens of Ohio. Third, their property in this corporation is not valued and taxed the same as individuals and the burden of taxation upon it is very much greater, nor has any equality been preserved in the valuation for taxation of the shares of your orator as compared with other property in the locality where your orator is established; on the contrary, the valuation in proportion to the value is fully twice as much as that fixed upon other property, while the rate of levy is the same. Fourth. The proceedings of said State board of equalization were irregular, illegal and of no binding obligation; for while the said act proposes to give authority to examine and equalize the value of such shares as fixed by the county auditor, and as reported by him to the State auditor, yet it furnishes no reason of comparison with other moneyed capital in the hands of individual citizens of the State. Fifth. That the taxation of the shares of your orator's stock, as aforesaid, is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens
279 of Ohio. Sixth. The necessary effect of the proceedings had in the assessment and levy of the taxes standing against your orator and the shares thereof owned by its said shareholders, has been to deprive your orator and such shareholders, both in the matter of valuation and equalization, of all benefits of the constitution and general laws of the State by which only the uniformity of the burdens of taxation upon all descriptions of property could be secured to take from them the security afforded by the limitations

of the act of Congress and to impose upon them such excessive exactions as to make the franchises granted by said act comparatively valueless. And your orator further represents that, if the shares of said stockholders are permitted to be sold — the lien created on them by section 2839 of the Revised Statutes of Ohio or otherwise, irreparable injury would not only be done to each of the shareholders but also to your orator; and it would thereby be subjected to great loss of standing and credits and other injuries, for the redress of which the law affords no remedies, and the franchises with which your orator is invested by the act of Congress, as aforesaid, would not only be impaired in value, but if such illegal exactions are to continue and if persisted in, would be rendered nearly useless; so that the disability imposed upon your orator to make transfers or pay individuals of or upon shares upon which such illegal tax remained unpaid would damage all the ordinary business of your orator and introduce confusion and uncertainty into its transactions and the consequent loss of public confidence upon which its success depends, for if your orator should pay such illegal tax and attempt to deduct the amount from dividends or other funds of the shareholders in its hands—which many of its shareholders have already prohibited its doing, it would be subjected to a great multiplicity of suits brought by its separate shareholders for so doing; and in any event a great number of suits would be rendered necessary to adjust the rights of all the parties, and your orator would be subjected to great expense and irreparable injury thereby. Inasmuch, therefore, as your orator is remediless by the strict rules of the common law and relievable only in equity it prays that said David H. Kimberly, as treasurer of said Cuyahoga county may be a party defendant to this bill of complaint; that the writ of subpœna may issue against him, and that he may answer the premises that your honors will grant unto your orator your *right* of injunction strictly restraining and enjoining, during the pendency of this suit, the said David H. Kimberly, as treasurer of said Cuyahoga county, as afore-
280 said from collecting or attempting to collect from your orator or said individual stockholders by distraint or otherwise any of the taxes in excess of the amount so tendered, and that said respondent may be decreed to receive in full of said taxes the sum so tendered by your orator and be perpetually enjoined from collecting or attempting to collect the balance of said taxes so illegally assessed and for such other and further relief in the premises as equity and good conscience require.

BOYNTON, HALE & HORR,
Solicitors for Complainant.

UNITED STATES OF AMERICA, }
Northern District of Ohio. }

Be it remembered that on this 13th day of December, 1888, personally came before me Charles L. Murfey, who being duly sworn, deposes and says, that he is the cashier of the complainant in the foregoing bill of complaint; that he has heard read the same and knows the contents thereof; that all the allegations and statements

therein contained, as derived from the information of others, he believes to be true and all other allegations and statements therein made are true in substance and in fact.

CHARLES L. MURFEY.

Sworn to before me, and signed in my presence this 15th day of December, 1888.

[SEAL.] HARRISON J. UHLS,
Notary Public.

And afterwards, to wit, on Dec. 15th, 1888, a subpœna was issued in this cause and which is in words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss:*
Northern District of Ohio, Eastern Division, }

To the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon David H. Kimberly, as treasurer of Cuyahoga Co., Ohio, if he be found in your district, to be and appear in the circuit court of the United States within and for the district aforesaid at Cleveland, on the first Monday in February next to answer a certain bill in chancery filed and exhibited in the said court against him by the Mercantile National Bank of Cleveland, Ohio. Hereof he is not to fail under penalty of the law hence ensuing and have you then and there this writ.

281 Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 15th day of Dec. A. D. 1888, and in the 113th year of the Independence of the U. S. A.

[SEAL.] AUGUSTUS J. RICKS, *Clerk,*
By M. W. SANDERS,
Deputy Clerk.

UNITED STATES OF AMERICA:

Memorandum.

The said defendant is required to enter his appearance in this suit, in the clerk's office of said court on or before the first Monday of Jan., 1889, otherwise the said bill may be taken *pro confesso.*

A. J. RICKS, *Clerk.*

Endorsed: Northern district of Ohio, *ss:* On the 18th day of Dec., 1888, I made due service of this writ by delivering a true and duly certified copy thereof to the within-named David H. Kimberly, treasurer of Cuyahoga county, Ohio. B. F. Wade, U. S. marshal, by George Wyman, deputy.

And afterwards to wit, on Dec. 17, 1888, an order was entered in the order book, which is in the words and figures following, to wit:

Order.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, Treasurer.

A temporary injunction is hereby allowed in said case as prayed for in said bill of complaint to continue until the final hearing of said case, upon the complainant's executing to the defendant an undertaking in said causes in the sum of $18,000 conditioned to pay all costs and damages that may result to said defendant by reason of the amounts of said injunction, provided the same is wrongfully allowed together with the amount of taxes finally adjudged to be due from said complainant or its shareholders to defendant as such treasurer. Done at chambers at the city of Toledo, the 17 day of Dec., 1888.

N. WELKER,
District Judge U. S., said District.

282 *Notice.*

And afterwards, to wit, *of* Dec. 18, 1888, a notice was filed in this cause and which is in the words and figures following, to wit:

The U. S. Circuit Court within and for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, Treas.

THE UNION NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, Treas.

THE COMMERCIAL NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, Treas.

THE OHIO NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, Treas.

THE NATIONAL BANK OF COMMERCE OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, Treas.
Notice.

The defendant in the foregoing-entitled case is hereby notified that the respective complainants will apply to Judge Martin Welker
283 of the U. S. circuit court room in Toledo, Ohio, at three o'clock p. m., on Monday, Dec'r 17, 1888, for a temporary injunction in each of the said cases, as prayed for in the respective bill of complaint.

BOYNTON, HALE & HORR,
Att'ys for Complainants.

The defendant in said foregoing-entitled cases accepts service of above notice, and waives all objections as to the time of the hearing Dec'r, 1888, Cleveland, Ohio.

HADEEN, DESSETT & COLLISTER,
Att'ys for Def't.

Bond.

And afterwards, to wit, on Dec. 18, —, a bond was filed in this cause, and which is in the words and figures following, to wit:

Know all men by these presents, that we, E. R. Perkins and S. Chamberlain, are held and firmly bound unto D. H. Kimberly, as treasurer of Cuyahoga county, Ohio, in the sum of $18,000, to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 18 day of Dec., A. D. 1888.

The condition of the above obligation is such that whereas, the said Mercantile National Bank, a citizen of the State of Ohio, has filed in the circuit court of the United States for the northern district of Ohio, a bill in chancery against said D. H. Kimberly, as treas., and has obtained an allowance as prayed for in said bill from the Hon. Martin Welker, a judge of said court, to wit: Now, if the said Mercantile National Bank shall abide the decision of said court in said cause and pay all moneys and costs which shall be adjudged against it in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

E. R. PERKINS. [SEAL.]
S. CHAMBERLAIN. [SEAL.]

Restraining Order.

And afterwards, to wit, on Dec. 20, 1888, a certified copy of restraining order was filed in this cause, and which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division. }

Be it remembered, that on a hearing before the Hon. Mar-
284 tin Welker, district judge, sitting at chambers, on the 17 day of Dec., A. D. 1888, the following order was made and signed and ordered to be entered upon the records of the court, to wit:

MONDAY, *Dec.* 17.

In the U. S. Circuit Court within and for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, Treas., etc.

A temporary injunction is hereby allowed in said case as prayed for in said bill of complaint to continue until the final hearing of said cause, upon the complainant's execution to the defendant and an undertaking in said cause in the sum of $18,000, conditioned to pay all costs and damages that may result to said defendant by reason of the allowance of said injunction, provided the same is wrongfully allowed, together with the amount of taxes finally adjudged to be due from said complainant or its shareholders to defendant as such treasurer. Done at chambers at the city of Toledo, this 17 day of Dec., A. D. 1888.

A. M. WELKER,
District Judge U. S., said District.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } *ss:*

I, Augustus J. Ricks, clerk of the circuit court of the United States within and for said district, do hereby certify that the within is a true copy of order entered upon the chancery order book of said court in the case therein entitled. That I have compared the same with the original entry of said order and it is a true transcript therefrom and of the whole thing.

Witness my official signature and the seal of said court at Cleveland, in said district, this 18 day of Dec., 1888, and in the one hundred and thirteenth year of the Independence of the United States of America.

AUGUSTUS J. RICKS, *Clerk,*
[SEAL.] MARTIN W. SANDERS,
Deputy Clerk.

Endorsed: Northern district of Ohio, *ss:* On the 19 day of Dec., 1888, I made due service of the within order by delivering a
285 copy thereof, certified by the clerk of said court, to the within David H. Kimberly, treas. of Cuyahoga county, Ohio. B. F. Wade, U. S. marshal, by George Wyman, deputy.

Restraining Order.

And afterwards, to wit, on January 6, 1898, an order was made in this cause, and which is in the words and figures following to wit:

TOLEDO, OHIO, *Jan.* 6, 1889.

DEAR SIR: Please enter appearance of defendants in the following cases:

Mercantile National Bank *vs.* David H. Kimberly, treas., No. 4648.
Commercial National Bank *vs.* Kimberly, treas., No. 4649.
Ohio National Bank *vs.* Kimberly, treas., No. 4650.
Cleveland National Bank *vs.* Kimberly, treas., No. 4651.
Union National Bank *vs.* Kimberly, treas., No. 4652.
National Bank of Commerce *vs.* Kimberly, treas., No. 4653.

Yours truly,

DAVID WATSON, *Att'y General.*
BROWN, GIDDES & JACKSON,
Of Counsel.

A. J. Ricks, clerk of U. S. circuit court, Cleveland, Ohio.

Decree.

And afterwards, to wit, on Feb. 7, 1898, a decree was entered in this cause, and which is in the words and figures following, to wit:

It appearing to the court that the said defendant has failed to plead answer or demur to the bill of complaint herein, it is found that the said defendant is in default, and it is therefore ordered, adjudged and decreed that said bill of complaint be taken as confessed as against said defendant.

BOYNTON, HALE & HORR,
Complainant's Solicitors.

Feb. 7, 1889.

286 *Order.*

And afterwards, to wit, on Feb. 8, 1889, an order was entered in this cause, and which is in the words and figures following, to wit:

FRIDAY, *Feb.* 8, 1889.

The appearance of Brown, Giddes & Jackson, heretofore entered herein, attorneys in this cause for defendant, is now by leave of court withdrawn.

And afterwards, to wit, on Wednesday, March 13, 1889, an order was entered in this cause, and which is in the words and figures following, to wit:

The time in which the defendant may answer or plead in this cause is extended until April 1st.

And afterwards, to wit, on April 1st, 1889, an answer was filed in this cause, and which is in the words and figures following, to wit:

In the Circuit Court of the U. S., Northern District of Ohio, Eastern Division, *ss:*

MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
DAVID H. KIMBERLY, as Treasurer of Cuyahoga County, Ohio. } Answer.

Now comes the defendant, David H. Kimberly, and for answer to the petition of the plaintiff filed herein, says: He admits that he is the duly elected and qualified treasurer of Cuyahoga county, Ohio; that the plaintiff is a national bank association incorporated under and by virtue of the act of Congress established and doing business in the city of Cleveland, in said northern district of Ohio, as alleged in said petition. He admits that the plaintiff has a capital stock of one hundred thousand dollars, divided into ten thousand shares of one hundred dollars each, all of which is paid up and certificates for the shares outstanding are owned by a large number of persons, some of whom are now residents of the State of Ohio. He admits that the cashier of said corporation
287 duly reported to said auditor of said county the resources and liabilities of said banking association at the close of business on Wednesday next preceding the second Monday in May, 1888, together with a full statement of the means and residences of the stockholders therein with the number of shares held by each and the par value of each share; that included in said return was the real estate owned by the plaintiff at the valuation of $—, which was already valued and equalized in conjunction with the other real estate in the city of Cleveland, at a taxable value of $149,260. He admits that the tax thereon is otherwise and separately assessed from the said shares of the said corporation on the tax duplicate of said county, and that said tax is paid aside from the taxes upon said shares of stock. He admits that the auditor of said county proceeded as required by sec. 2766 of the Revised Statutes of Ohio as amended March 9, 1893, to fix the total value of such shares according to their true value in money and fix the same at $679,000. exclusive of the assessed value of its real estate, and that said auditor transmitted to the annual State board of equalization the report so made by said cashier, together with the valuation of such shares so fixed by said auditor. He admits that the said State board of equalization did examine said returns so made by said county, and the value of said shares as fixed by said county auditor, and did fix the valuation of said shares at $679,000, and that being the same value fixed by said county auditor upon said shares exclusive of said real estate; but he denies that in fixing the valuation of said shares of stock by said auditor, or by said State board of equalization, or either of them, said valuation was knowingly, designedly fixed at a higher per cent., or in excess of value fixed in said county or other moneyed capital in the hands of individual citizens of the State of Ohio, and of said city and county. He denies that said

valuation is excessive or that the same is greater than that of other moneyed capital in the hands of individual citizens of the State of Ohio in the said city and county in the sum of $148,000, or any other sum whatsoever. He denies that the auditor did not fix or equalize the value of said shares with the value of shares in other banks. He denies that said auditor or State board of equalization did intentionally make any excessive valuation on the property or shares of plaintiff for the year 1888. He admits that said valuation so made by said auditor and said State of the equalization, was by the auditor of said State returned to the county auditor and
288 the same was placed upon the tax duplicate of said county for the year 1888, and that upon the valuation of such shares for the year 1888 the tax upon the same amounted in the aggregate to $19,215.70, upon the valuation aforesaid of said shares, exclusive of the assessed value of its real estate; he denies that said tax so levied and assessed was in any manner and is in any manner in violation of law, or that it was levied on a violation higher than that authorized by law. He admits that the second section of the twelfth article of the constitution of the State of Ohio provides: "Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and also all real and personal property, according to its true value in money;" and the third section of the same article provides: "That all property employed in banking shall always have a burden of taxation equal to that imposed upon the property of individuals;" and that the fourth section of the thirteenth article provides: "That property of corporations now existing or hereafter created shall forever be subject to taxation the same as property of individuals." And that the act of Congress under which the plaintiff is incorporated authorized the taxation of its shares of stock subject to the condition, "that the taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of other individual citizens residing in said city and county. He denies that other moneyed capital in the hands of said individual citizens as valued for taxation at not to exceed 40 per cent. of its true value in money, and at a much less percentage of its value in money than that fixed upon the shares of the plaintiff herein by said county auditor and said State board of equalization. He denies that said plaintiff is required by said valuation to bear an unjust and unequal burden of taxation as compared with other property and moneyed capital within said county and city. He denies that said valuation so placed by said auditor and said State board of equalization is in violation of any law of the United States, or the State of Ohio. He denies that the valuation placed upon the shares of stock of the plaintiff is any greater in proportion of value of such shares than the valuation for a taxation fixed in said county upon other moneyed capital in the hands of other individual citizens of Ohio. He alleges that the valuation so fixed as aforesaid upon the shares of stock of the plaintiff *are* much less than their true value in money and much less than the value fixed upon other moneyed

capital in the hands of individual citizens of said city and
289 county, and each and every other allegation in said petition not specifically admitted herein this defendant denies.

Wherefore defendant prays that he may go hence with his costs.

HADDEN, DISSETTE & COLLISTER,
Att'ys for Def't.

STATE OF OHIO, *Cuyahoga County,* } ss:

D. H. Kimberly, being first duly sworn, says that the facts stated and allegations contained in the foregoing answer are true, as he verily believes.

D. H. KIMBERLY.

Sworn to before me by said D. H. Kimberly and by him subscribed in my presence, this 30th day of March, A. D. 1889.

ED. W. DISSETTE, [SEAL.]
Notary Public.

And afterwards, to wit, on April 12th, 1888, a replication was filed in this cause, and which is in words and figures following, to wit:

Replication.

Circuit Court of the United States, Northern District of Ohio, E. D.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Complainant,
vs.
D. H. KIMBERLY, Treas., etc., Respondent. } Replication.

The replication of the above-named complainant to the answer of the above-named respondents.

The replicant, saving and reserving to itself now and at all times hereafter all and all manner of benefits and advantages of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereunto, says that it will now maintain and prove the bill of complaint to be true, *are* certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to reply unto by
290 this replicant, without this, that any other matter or thing whatsoever in the said answer contained material and effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and *this* this replicant will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by the said bill it has already prayed.

BOYNTON, HALE & HORR,
Complainant's Solicitors.

AUGUSTUS J. RICKS, *Clerk.*

And afterwards, to wit, on Saturday, September 28th, 1889, a decree was entered in this cause, and which is in the words and figures following, to wit:

Decree.

THE MERCANTILE NATIONAL BANK *vs.* D. H. KIMBERLY, Treas. } Chancery.

At this term the parties appearing by their respective counsel, this cause came on for hearing, and the court being fully advised in the premises from the testimony and exhibits adduced in the open court, and upon consent of respondent's solicitors, do find that the valuation of the shares of stock described in said bill of complaint for the year 1888 by the auditor of Cuyahoga county, as equalized by the State board of equalization for bank shares, was excessive in the sum of $129,000; that the true value of said shares was $550,000 instead of $679,000, as equalized by said board.

The court further find that there should be deducted from said first valuation the sum of $169,235, being the amount on which the particular shareholders named in said bill of complaint are not taxable, the same being less in amount and value than their *bona fide* debts from which they are entitled to have the same deducted, leaving the sum of $380,675, which is hereby declared to be the true valuation of the shares of said bank taxable under the act of Congress of said year 1888.

The court further find that the amount of taxes due from said complainant to said defendant on said valuation for said
291 years of $10,775.65, and that the residue and remainder of said taxes standing on the duplicate for said year against said bank or the shareholders thereof, were improperly levied and are illegal and void. It is therefore ordered, adjudged and decreed that the complainant paid to the said defendant as treasurer the said sum of $10,775.65, and that the said defendant and his successors in office be, and the same are hereby, perpetually enjoined from collecting or attempting to collect any portion of said excessive tax so declared to have been illegally paid and void.

It is further ordered, adjudged and decreed that the defendant pay the costs of this suit.

Thereupon plaintiff offered in evidence the record of the case of The Mercantile National Bank of Cleveland, Ohio, *vs.* Joseph C. Shields, as treasurer of Cuyahoga county, Ohio, contained in volume No. 20 of Chancery Records, pages 336 to 345, inclusive.

To which defendant objected as incompetent and irrelevant and as not pertaining to the issues made by the pleadings herein.

Said record is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division.

MERCANTILE NATIONAL BANK
vs.
JOSEPH C. SHIELDS, Treas.

Record of the proceedings, circuit court of the United States within and for the eastern division of the northern district of Ohio, in the cause and matter hereinafter stated and finally disposed of at a regular term of said court begun and held at the city of Cleveland, in said district, in the first Tuesday in October, being the third day of said month, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America the one hundred and eighteenth.

292 Present: The Hon. Augustus J. Ricks, United States district judge.

Among the proceedings then and there had were the following, to wit:

MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio,
vs.
JOSEPH C. SHIELDS, as Treas. of Cuyahoga County, Ohio.
5122. Equity.

Be it remembered, that heretofore, to wit, on June 27th, A. D. 1893, a bill of complaint was filed herein by the Mercantile national bank in the words and figures following, to wit:

Bill of Complaint.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio,
vs.
JOSEPH C. SHIELDS, as Treas. of Cuyahoga County, Ohio.
Bill in Equity. No. 5122.

Your complainant, The Mercantile National Bank of Cleveland, Ohio, now comes and respectfully shows that it is a national banking association incorporated under and by virtue of the act of Congress, entitled "An act to provide for the national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof." Approved June 3rd, 1864, and the amendments thereof, and is established and doing business in the city of Cleveland, in said northern district of Ohio, and brings this its bill of complaint against Joseph C. Shields, treasurer of Cuyahoga county, Ohio, a resident of said city of Cleveland, Ohio, and a citizen of Ohio and of said northern district, eastern division.

The complainant further shows and avers that its grievance hereinafter complained of arises and is exclusively founded on the violation by the respondent and others, whose illegal acts he is carrying into effect, of the rights of the shareholders of the
293 said complainant national bank accorded to them by No. 5219 of the Revised Statutes of the United States, securing to said shareholders a restriction upon the taxation of the shares of stock of said bank by State authority at the rate and limits assessed upon other moneyed capital in the hands of individual citizens of the State as will hereinafter fully appear.

The complainant further says and avers that it has a capital stock of $1,000,000, divided into 10,000 shares of $100 each, all of which is paid up, and certificates for the shares outstanding and owned by a large number of persons, most of whom are residents of the State of Ohio; and in accordance with No. 2765 of the Revised Statutes of Ohio, then and now in force, the cashier of the complainant duly reported in duplicate to the auditor of said county the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday in May, 1892, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value thereof, as required by said section; that included in said return so made by said cashier was the real estate owned by the complainant valued at $168,000, separately assessed and charged on the tax duplicate of said county, and the tax thereon paid by the complainant to the treasurer of said county aside from the taxes set forth in this bill; that thereupon said auditor proceeded as required by No. 2766 of the Revised Statutes of Ohio, to fix the total value of such shares according to their true value in money, and fix the same at $600,000, exclusive of the assessed value of its real estate, and made out and transmitted to the annual State board of equalization of incorporated banks a copy of the report so made by said cashier, together with the valuation of such shares as was fixed by said auditor; that said State board of equalization, acting under — 2808 and 2809 of the Revised Statutes of Ohio, did examine the returns aforesaid made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor, and did pretend to equalize said shares to their true value in money and fix the valuation thereof at $600,000, exclusive of the assessed value of its real estate, and both said auditor and said State board of equalization, so called, did fix and establish a much higher valuation for taxation upon and for the shares of the capital stock of the complainant than upon other moneyed capital in the hands of individual citizens of the State by refusing and disallowing any deduction
294 of the *bona fide* indebtedness of said shareholders of said capital stock from the valuation of said shares so fixed for taxation as is allowed to individual and other citizens of the State of moneyed capital invested in the credits hereinafter defined, and the auditor of State did certify the said valuation of said auditor of said county of Cuyahoga, which said auditor of said county did enter upon the tax duplicate of said county for the year 1892.

The complainant further avers that by No. 2730 of the Revised Statutes of Ohio, it is enacted that: "The term 'credits' shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable things or for labor or service due or to become due to the person liable to pay taxes thereon, including deposits in banks or with persons in or within the State other than such as are held to be money, as hereinafter defined, when added together (estimating every such claim or demand at its true value in money) over and above the sum of legal *bona fide* debts owing by such persons."

The complainant further says that a large amount of moneyed capital in the hands of individual citizens of the State and of said county of Cuyahoga and State of Ohio, city of Cleveland, invested in promissory notes and other legal obligations, securities, claims and demands, is, by the aforesaid provision allowing a deduction of legal *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares, as to which no exemption or deduction is provided for by the laws of the State, which discrimination is in direct violation of the restrictions of said No. 5219 of the Revised Statutes of the United States, which provide that: "The taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such State."

The complainant further avers and shows that the following-named stockholders of said bank were, on the said date next preceding the second Monday of April, A. D. 1892, the owners of the number of shares of stock of said bank set opposite their respective names, to wit: Edwin R. Perkins, 370 shares; C. L. Murfey, 54 shares; L. A. Murfey, 145 shares; James Parmelee, 70 shares; Wm. G. Mather, 150 shares; Amos Townsend, 240 shares; James Barnett, 180 shares; A. S. Gorham, 50 shares; J. B. Painter, 400 shares; W. W. Boynton, 50 shares; Trueman P. Handy, 600 shares; Wm. Bingham, 150 shares; A. L. Withington, 30 shares. That said shares were
295 valued by said State board of equalization for taxation for the year 1892, at $149,340, and certified by said board to the auditor of Cuyahoga county, as the taxable value thereof, which value multiplies by the rate of .0275-100 cents on the dollar fixed for said year as the rate for taxation upon all property situated in said county upon the dollar's valuation, amounted on said shares to $4,106.84.

The complainant further says that at the day last named, and at the time the cashier of said banking association made return to the auditor of said county of the names and residences of the shareholders of said association with the numbers and par value of the shares of the capital stock of the said banking association for the year 1892, to wit, between the first and second Monday in May of the said year, each of said above-named shareholders was indebted and owing to others of legal *bona fide* debts the sum in excess of the credits from which, under the laws of Ohio he was entitled to deduct said debts to an amount equal to the par value of said shares,

which said excess of debts over credits as aforesaid, the said shareholders above named were entitled to have deducted from the assessed value of said shares so severally owned by them.

And the complainant further says that the auditor of said county in making the duplicate for the year 1892, did deduct and abate said indebtedness of said several shareholders from the assessed value of said shares so owned by them respectively, thereby exempting the same from taxation, and delivered the duplicate containing said deduction to the defendant, as treasurer of said county, and the complainant paid to said treasurer on or about the 20th day of December, 1892, the half taxes due from said shareholders under the laws of the State with said deductions allowed thereon.

The complainant further says that since said payment was made, the auditor of said county disregarding the rights of said shareholders in the premises, and professing to make correction of errors contained upon the duplicate, so in the hands of said treasurer on or about the 10th day of June, 1893, wrongfully and unlawfully added to said duplicate as against the shareholders above named the entire amount of said deduction so as aforesaid properly allowed, on the professed claim that said deductions were improperly allowed under the laws of the State of Ohio, and has assessed against the same the rate and percentage of taxation fixed for said city, county and State for 1892, and entered the same on said duplicate;

296 and the said defendant threatens and is about to collect by distraint or otherwise, the said tax on said shares of stock with said deductions disallowed.

The complainant further avers that by No. 2839 of the Revised Statutes of Ohio, it is declared that, any taxes assessed on any shares of stock or the value thereof, of any bank or banking association shall be and remain a lien on such shares from the first Monday in May in each year until such taxes are paid; and in case of nonpayment of such taxes at the time required by law, by any shareholder and after notice received of the county treasurer of the nonpayment of such taxes, it shall be unlawful for the cashier or other officers of such bank or banking association to transfer or permit to be transferred, the whole or any portion of said stock until the delinquent taxes thereon, together with costs and penalties shall be paid in full and no dividend shall be paid on any stock so delinquent, so long as such taxes, penalties or costs, or any part thereof remain due and unpaid." The complainant says that said defendant further threatens in case of non-payment of said taxes so unlawfully added to give the notice provided for in said section, and thereby prevent the transfer of any of said shares of stock from said shareholders or any other persons to whom they or either of them may have sold the same.

The complainant further says that if the shares of said stockholders are permitted to be sold under the lien created on them by said No. 2839 of the Revised Statutes of Ohio, or otherwise irreparable injury would not only be done to each of the shareholders, but also to the complainant, and it would thereby be subjected to great loss of standing and credit, for the redress of which the law affords

no remedy and the franchises with which your orator is invested by the act of Congress, as aforesaid, would be greatly impaired in value; and the disability imposed upon the complainant to make transfers or to pay dividends on or upon shares upon which such illegal tax remains unpaid would injuriously affect all its ordinary business and introduce confusion and uncertainty into its transactions, and the consequent loss of public confidence upon which its success depends; and if the complainant should pay said illegal taxes and attempt to deduct the amount from the dividends or other funds of the shareholders in its hands it would be subject to a great multiplicity of suits brought by its separate shareholders, by so doing, and, in any event, a great number of suits would be rendered necessary to adjust the rights of all the parties, and the complainant would be subjected to great expense and irreparable injury thereby. The com-
297 plainant says that a part of said shares upon which said deductions were allowed in the settlement for the tax due December 20th, 1892, have since then been sold and transferred on the stock books of complainant.

The complainant further avers heretofore, to wit, at a date prior to the April term of this court in the year 1887, the complainant brought suit against Horatio N. Whitbeck as treasurer of said Cuyahoga county, who then held such office to enjoin the collection of the excessive taxation of shares of said complainant, growing out of the refusal of the taxing officers of said county to allow the deductions of *bona fide* debts of stockholders from the assessed value of said shares, said Whitbeck then representing the same interest, sustaining the same interest, sustaining the same relations and charged with the same duties to the public as does the present defendant; and in said suit this complainant alleged by its bill the refusal by the then auditor of said county, to allow a deduction of *bona fide* debts of the shareholders from the value of shares of stock of said complainant owned in large part by the same stockholders as those above named, and in which action said treasurer of said county, admitting said refusal to allow said deductions so joined issue as to present the question of the right of said owners of said shares, to said deduction, in view of the laws of Ohio, the said laws being the same as the present laws of the State and those under which the taxing officers of said county acted in 1892 and 1893, in making assessments and in refusing deductions to be made of *bona fide* debts of stockholders from the valuation of said shares; and the complainant says that upon the issue so joined, the said court at its April term, A. D. 1887, held and determined that said shareholders were by law entitled to said deduction of *bona fide* debts from the value of their said shares, to an equal amount fixed for taxation; and in said action the court gave judgment perpetually enjoining said treasurer from collecting or attempting to collect any tax or assessment on the valuation of said shares to an amount equal to said debts from which said deduction was sought to be made and disallowed by said auditor, on the ground that said disallowance was a discrimination against money invested in national bank shares, prohibited by the act of Congress; and the complainant alleges that said issue, so de-

termined and adjudged, was between the same parties involved the same subject-matter and legislation and the judgment given therein remains wholly unreversed and is still in full force and op-
298 eration. The complainant further says that in pursuance of the statute of Ohio, authorizing them so to do the said commissioners of Cuyahoga county, extending the time for the payment of the last half of the taxes from 1892, from June 20th until July 20th, 1892; that on the 27th day of June, 1893, the complainant tendered to said defendant at his office as treasurer of said county, in lawful money of the United States, the entire tax due from the said shareholders of the complainant on their respective shares of stock, which said defendant refused to receive unless said complainant would also pay the tax levied on the amount of said deductions so as aforesaid at first properly allowed and, as aforesaid improperly and unlawfully placed on said duplicate as above stated. The complainant now and here brings into court the sum due said defendant as such treasurer for the tax lawfully levied on said shares against the complainant's said shareholders and submits and subjects the same to the order and direction of this court. Inasmuch, therefore, as the complainant is remediless by the strict rules of law, and relievable only in equity, it prays that said Joseph C. Shields, as treasurer of said county of Cuyahoga may be made a party defendant to this bill of complaint; that a writ of subpœna may issue against him, and that he may answer in the premises; that your honors will grant unto your petitioner during the pendency of this suit, your writ of injunction strictly restraining and enjoining the said Joseph C. Shields, as treasurer of said county of Cuyahoga, and his successor in office from collecting or attempting to collect from your petitioner or said individual shareholders, by distraint or otherwise, any of said taxes as the same stand charged on said duplicate, and that the said respondent may be decreed to receive in full of said taxes the sum so tendered by your petitioner, and so brought into court, and to be perpetually enjoined from collecting or attempting to collect the remainder of said taxes, being a portion so illegally assessed, and for such other and further relief in the premises as equity and good conscience require.

BOYNTON & HORR,
Solicitors for Plaintiff.

UNITED STATES OF AMERICA, }
Northern District of Ohio. }

Be it remembered that this 27th day of June, A. D. 1893, personally came before me C. L. Murfey, who being by me duly sworn, deposes and says that he is the cashier of the complainant
299 in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof, that all the allegations and statements therein contained, as derived from the information of others, he believes to be true, and all other allegations and statements therein made are true in substance and in fact.

C. L. MURFEY.

Sworn to before me and in my presence subscribed this 27th day of June, A. D. 1893.

[SEAL.] LELAND INGERSOLL,
Notary Public.

Tax, notarial fees 40 cents.

CLEVELAND, OHIO, *June 27th*, 1893.

I hereby waive the issuing and service of process in the above case and enter my appearance therein.

J. C. SHIELDS, *Treas.*,
By T. K. DISSETTE, *His Att'y.*

Which said bill of complaint was endorsed as follows:

No. 5122. United States circuit court for the northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland, Ohio, *vs.* Joseph C. Shields as treasurer of Cuyahoga county, Ohio. Bill in equity and entry of appearance, filed June 27, 1893. Irvin Belford, clerk, U. S. circuit court.

Afterwards on the same day, to wit, June 27, 1895, an order was made herein allowing temporary injunction which reads and is in the words and figures following, to wit:

Order Allowing Injunction.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, *vs.* JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio. } No. 5122. Equity.

On motion of the orator by its term after due notice given to the respondent and good cause being shown therefor it is ordered that on an undertaking being given in the sum of $5,000 with sureties to the approval of the clerk of this court, the preliminary
300 writ of injunction issued herein restraining and enjoining said respondent Joseph C. Shields as treasurer of the county of Cuyahoga and State of Ohio, and his successors in office from collecting or attempting to collect from the orator or from its individual shareholders named in said bill by distraint or otherwise any of the taxes named in the bill as the same stand charged upon the duplicate of Cuyahoga county, except that said respondent is hereby given authority without prejudice to his rights in the premises, to receive from the orator $6,346.58, being the taxes by said orator's bill admitted to be justly due from it to said respondent, and that said writ remain in force until further order of this court.

Afterwards, to wit, on June 28th, A. D. 1893, an undertaking for injunction was filed herein by the complainant in the words and figures following, to wit:

Injunction Bond.

Know all men by these presents that we, Truman P. Handy and Charles L. Murfey are held and firmly bound unto Joseph C. ——, treasurer of Cuyahoga county, Ohio, in the sum of five thousand dollars, to the payment whereof we bind ourselves, our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 27th day of June, A. D. 1893.

The condition of the above obligation is such that whereas, the said Mercantile — Bank, of Cleveland, Ohio, citizen of the State of Ohio, -as filed in the circuit court of the United States for the northern district of Ohio, the bill in chancery against the said Joseph C. Shields, as treasurer, and have obtained an allowance of an injunction as prayed for in said bill, from the United States circuit court, northern district of Ohio, E. div., now if the said The Mercantile National Bank, of Cleveland, Ohio, shall by the decision of the court in said cause, *and* pay all moneys and costs which shall be adjudged against — in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

TRUMAN P. HANDY. [SEAL.]
CHARLES L. MURFEY. [SEAL.]

Which said injunction bond was endorsed as follows:

U. S. circuit court, northern district of Ohio. No. 5122. The Mercantile National Bank of Cleveland, Ohio, *vs.* Joseph C. Shields. Injunction bond. Approved and filed June 28th, 1893. Irvin Belford, clerk.

301 Afterwards, on the same day an injunction was issued out of and under the seal of th-s court in the words and figures following:

Preliminary Injunction.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } *ss:*

The President of the United States of America to Joseph C. Shields, as treasurer of Cuyahoga county, Greeting:

Whereas, The Mercantile National Bank of Cleveland, Ohio, a citizen of the State of Ohio, -as filed upon the chancery side of the circuit court of the United States, within and for the northern district of Ohio, a bill against the said Joseph C. Shields as treasurer of Cuyahoga county, Ohio, and has *at*tained an allowance of an injunction as prayed for in said bill, from Honorable Augustus J. Ricks, U. S. district judge, one of the judges of said court. Now, therefore, we having regard to the matters in said bill contained, do hereby command and strictly enjoin you, the — Joseph C. Shields, as treasurer of Cuyahoga county, Ohio, and your successors in office, from collecting or attempting to collect from said The Mercantile

National Bank, Cleveland, Ohio, or from its individual shareholders named in said bill by distraint or otherwise, any of the taxes named in the said bill as the same stand charged upon the duplicate of Cuyahoga county, Ohio, except that said treasurer is hereby given authority without prejudice to the rights in the premises to receive from said The Mercantile National Bank of Cleveland, Ohio, $6,346.58, being the taxes by said complainant's bill admitted to be justly due from it to said respondent. Which commands and injunctions you are respectfully required to observe and obey until our said circuit court shall make further order in the premises. Thereof fail not, under penalty of the law thence ensuing.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States this 28th day of June, A. D. 1893, and in the 117th year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk.* [SEAL.]

Which said injunction was endorsed as follows: No. 5122. United States of America, northern district of Ohio, eastern division. In chancery. The Mercantile National Bank of Cleveland, Ohio, vs. Joseph C. Shields, as treasurer of Cuyahoga county, Ohio. 302 Injunction returned and filed June 28th, 1893. Irvin Belford, clerk, U. S. circuit court, N. D. O. Boynton & Horr, complainant's solicitors.

Afterwards, on the same day said writ was returned and filed, with the following marshal's return indorsed thereon:

NORTHERN DISTRICT OF OHIO, *ss:*

On this 28th day of June, 1893, at Cleveland, Ohio, I made due service *to* this writ upon the within-named Joseph C. Shields as treasurer of Cuyahoga county, Ohio, by leaving at his office with F. T. Pomeroy, deputy treasurer, true and certified copy thereof.

W. C. HASKELL,
U. S. Marshal,
By W. H. COOK, *Deputy.*

Service	$2 00
Copy	1 00
Travel	50
Writing return	10
	$3 00

Afterwards, at the April term, A. D. 1893, of this court, to wit, on September 30th, 1893, an order of continuance was made and entered herein as follows, to wit:

Continuance.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
JOSEPH C. SHIELDS, Treasurer. } Equity.

This cause is continued until the next term of this court.

Afterwards, at the October term, A. D. 1893, of this court, to wit, on October 3rd, 1894, the decree *pro confesso* was entered herein in the words and figures following, to wit:

303 *Decree pro Confesso.*

THE MERCANTILE NATIONAL BANK
vs.
JOSEPH C. SHIELDS, as Treasurer, etc., } 5122. In Equity.

It appearing to the court that the respondent, Joseph C. Shields, as treasurer and etc., has failed to enter his appearance herein and has failed to answer to the bill of complaint, and that the time therefor has expired, it is found that said respondent is in default and it is therefore ordered that the bill of complaint herein be taken as true and that the decree *pro confesso* be entered against him.

BOYNTON & HORR,
Solicitors for Complainant.

October 3rd, 1893.

Afterwards, at the October term, A. D. 1893, of this court, to wit, on November 4th, 1893, an order was made herein in the words and figures following, to wit:

Order — Set Aside pro Confesso.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
JOSEPH C. SHIELDS, Treasurer. } No. 5122. Equity.

In this cause the decree *pro confesso* heretofore entered herein is hereby vacated and set aside and leave is given respondent to file a demurrer herein instanter which is accordingly done.

304 Afterwards, on the same day the respondent came and filed herein its demurrer in the words and figures following, to wit:

Demurrer.

United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, Plaintiff,
vs.
JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio, Respondent.
} No. 5122. Demurrer.

Now comes the respondent, Joseph C. Shields, treasurer of Cuyahoga county, Ohio, and demurs to the petition of complainant filed herein on the following grounds, to wit:

First. That there is a defect of parties plaintiff herein.

Second. That the facts stated and allegations contained in the petition of plaintiff aforesaid, do not constitute a cause of action herein.

T. K. DISSETTE,
Attorney for Respondent.

Oral hearing requested.

Which said demurrer was endorsed as follows: No. 5122. United States circuit court for the northern district of Ohio, eastern division. The Mercantile National Bank *vs.* Joseph C. Shields, as treasurer, etc. Demurrer filed December 4th, 1893. Irvin Belford, clerk, U. S. circuit court, N. D. O.

305 Afterwards, at the October term, A. D. 1893, of said court, to wit, on December 30th, 1893, an order overruling demurrer and adjudging for the complainant was made and entered herein as follows, to wit:

Order of Decree.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio,
vs.
JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio.
} Equity. No. 5122.

The parties appearing by counsel this cause came on for hearing and by consent of the parties, the judgment or order *pro confesso* heretofore entered in said case is hereby effected; and the respondent has leave to demur to said complain*ant*; and thereupon came the respondent and demurred to the bill of complaint; and the cause came on for hearing upon said demurrer and was argued by counsel; on consideration whereof it is ordered, adjudged, and decreed that said demurrer be, and the same is hereby overruled, and the defendant electing to stand by his demurrer, the court upon further hearing defined the allegations of the complainant's bill to be true,

and that the tax therein sought to be enjoined was illegally assessed and entered upon the treasurer's duplicate for collection. It is therefore ordered, adjudged and decreed that the defendant and his successors in office be, and they are hereby perpetually enjoined from collecting, or in anywise or manner attempting to collect the said illegal tax set out and particularly described in said bill of complaint. It is further ordered and decreed that the defendant pay the costs of this suit; to the order and judgment of the court overruling the demurrer of the defendant to the complainant's bill, and to the granting of said decree in favor of the said complainant, the defendant *accepts* and prays an appeal to the circuit court of appeals for the sixth circuit, which is allowed. Bond for appeal fixed at $500.

Enrolled and signed this 29th day of December, A. D. 1894.

IRVIN BELFORD, *Clerk*,
By H. E. McCOLLUM, *Deputy*.

306 Thereupon plaintiff offered in evidence the record of the case of The Mercantile National Bank, of Cleveland, Ohio, *vs.* Joseph C. Shields, as treasurer of Cuyahoga county, Ohio, contained in volume No. 20 of Chancery Records, pages 393 to 405 inclusive.

To which defendant objected as incompetent and irrelevant, and as not pertaining to the issues made by the pleadings herein.

Said record is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, } *ss:*

THE MERCANTILE NATIONAL BANK
vs.
JOSEPH C. SHIELDS, Treas. } No. 5197.

Record of the proceedings of the circuit court of the United States within and for the eastern division of the northern district of Ohio in the cause and matter hereinafter stated and finally disposed of at a regular term of said court begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the 3rd day of said month, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth.

Present: Honorable Augustus J. Ricks, U. S. district judge.

Among the proceedings then and there had were the following, to wit:

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio, Respondent. } Chancery. 5197.

Be it remembered that heretofore, to wit, on December 26th, A. D. 1893, the Mercantile National Bank, of Cleveland, filed

herein its bill of complaint in the words and figures following, to wit:

307 *Bill.*

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio, Respondent.

Bill in equity.

Your complainant, The Mercantile National Bank, of Cleveland, Ohio, now comes and respectfully shows that it is a national banking association incorporated under and by virtue of the act of Congress entitled: "An act to provide for the national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof;" approved June 3rd, 1864, and the amendments thereof, and is established and doing business in the city of Cleveland, in said northern district of Ohio, and brings this its bill of complaint against Joseph C. Shields, treasurer of Cuyahoga county, Ohio, and resident of said city of Cleveland, and a citizen of Ohio, of said northern district and eastern division.

The complainant further shows and avers that its grievance hereinafter complained of, arises and is exclusively founded on the violation by the respondent and others, whose illegal acts he is carrying into effect of the rights of the shareholders of the said complainant, national bank, accorded to them by No. 5219 of the Revised Statutes of the United States, securing to said shareholders a restriction upon the taxation of the shares of stock of said bank by State authority to the rate and limit assessed upon other moneyed capital in the hands of individual citizens of the State, as will hereinafter fully appear.

The complainant further says and avers that it has a capital stock of $1,000,000 divided into 10,000 shares of $100 each, all of which are fully paid up, and certificates for the shares are outstanding and owned by a large number of persons, most of whom are residents of the State of Ohio; and in accordance with No. 2765 of the Revised Statutes of Ohio, then and now in force, the cashier of the
308 complainant duly reported in duplicate to the auditor of said county the resources and liabilities of said banking association at the close of business on Wednesday next preceding the second Monday of May, 1893, together with a full statement of the names and residences of the shareholders therein with the number of shares held by each and the par value thereof, as required by said section; that included in said return so made by said cashier was the real estate owned by the complainant valued at $—, separately assessed and charged on the tax duplicate of said county;

that thereupon said auditor proceeded as required by No. 2766 of the Revised Statutes of Ohio, to fix the total value of such shares according to their true value in money, and fix the same at $600,000.00, exclusive of the assessed value of its real estate and made out and transmitted to the annual State board of equalization of incorporated banks, a copy of the report so made by the said cashier, together with the valuation of such shares as was fixed by said auditor; *at* said State board of equalization, acting under No. 2808 and No. 2809 of the Revised Statutes of Ohio, did examine the return aforesaid made by said cashier to said county auditor and the value of such shares as fixed by said county auditor, and did pretend to equalize said shares to their true value in money and fixed the valuation thereof at $600,000, exclusive of the assessed value of the real estate; and both said auditor and said State board of equalization did fix and establish a much higher value for taxation upon and for the shares of the capital stock of the complainant than upon other moneyed capital in the hands of individual citizens of the State by refusing and disallowing any and such deduction of the *bona fide* indebtedness of such shareholders of said capital stock from the valuation of said shares so fixed for taxation as is allowed to individuals and other citizens of the State on moneyed capital invested in the credits and securities hereinafter more particularly defined; and the auditor of the State did certify said valuation to the said auditor of said county of Cuyahoga which said auditor of said county did enter upon the tax duplicate of said county for the year 1893, with said deductions disallowed; that in estimating the value of the stock of complainant's shareholders the business and franchises of said bank are and were considered as a large element of value, and the value of said shares *were* largely increased by reason and in consequence thereof, while the shares of stock in nearly all domestic corporations of the State of Ohio, are by
309 the statutes of the State expressly exempted from taxation, the tax required being one levied and placed upon the property in which the companies' capital is invested, exclusive of its franchise, created by such inclusion of the franchise in the value fixed upon the shares of complainant while excluding it in the estimate of the value of the corporate property of other corporations, a discrimination prohibited by the act of Congress.

The complainant further says that all unincorporated banks and banking companies and private individuals of said State engaged in banking are expressly authorized by the statute of Ohio to deduct their *bona fide* debts from all their legal claims and demands, a right not given to the complainant's shareholders nor provided for them by any law of Ohio, but denied to said shareholders in the estimate of value of said shares by the auditor of the State board of equalization in refusing deductions on account of the shareholders' indebtedness.

The complainant further avers that by No. 2730 of the Revised Statutes of Ohio, it is enacted that: "The term credits shall be held to mean the excess of the sum of all legal claims and demands whether for money or other valuable things or for labor or service

due or to become due to the persons liable to pay taxes thereon, including deposits with banks, or with persons in or out of the State, other than such as are held to be money as hereinbefore denied, when added together (estimating every such claim or demand at its true value in money) over and above the sum of legal *bona fide* debts owing by such persons."

The complainant further says and avers that a large amount of moneyed capital in the hands of individual citizens of the State and of said county of Cuyahoga and city of Cleveland invested in promissory notes and other legal obligations, securities, claims and demands, is, by the aforesaid provision allowing a deduction of legal, *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares as to which no deduction or exemption is provided for by the laws of the State, which discrimination is in direct violation of the restrictions of said No. 5219 of the Revised Statutes of the United States, which provide that: "The taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

The complainant further avers and shows that the following-named stockholders of said bank were on the said day next
310 preceding the second Monday of April, A. D. 1893, the owners of the number and shares of stock of said bank set opposite their respective names, to wit:

Mary B. Payne	200 shares
A. S. Gorham	50 shares
S. E. Williamson	50 shares
J. B. Painter	400 shares
W. G. Mather	155 shares
T. P. Handy	500 shares
Amos Townsend	240 shares
Wm. Bingham	150 shares
R. K. Hawley	50 shares
E. R. Perkins	530 shares
L. A. Murfey	145 shares
C. L. Murfey	61 shares
James Barnett	180 shares

That said shares were valued by said State board of equalization for taxation for the year 1893, $162,660, and certified by said board to the auditor of Cuyahoga county as the taxable value of the same; that the rate of taxation for all taxes assessed and collected for the year 1893 within said county, was .0279 on a dollar's valuation and amounted on said value of said shares to $4,527.36.

The complainant further says that on said day next preceding the second Monday of April, A. D. 1893, and at the time the cashier of said banking association made return to the auditor of said county of the names and residences of the shareholders of said association with the numbers and par value of the shares of the capital stock of said banking association for the year 1893, to wit, between the

first and second Mondays in May of said year, each of said above-named shareholders was indebted and owing to others of legal, *bona fide* debts, some in excess of the credits from which under the laws of Ohio he was entitled to deduct said debts to an amount equal to the value of said shares, which said excess of said debts *to an amount equal to the value of said shares, which said excess of said debts* over said credits as aforesaid the said shareholders above named were entitled to have deducted from the assessed value of said shares so severally owned by them proof of which fact was duly made to said auditor of said State board of equalization by said shareholders at the time that they respect*fully* fixed the valuation of said shares of stock. And complainant further says that both the auditor of said county and of said State board of equalization for banks
311 refused to allow the deduction of any indebtedness of said shareholders from the value of said shares, and made up and fixed the valuation of said shares in entire disregard of the right or claim of said shareholders to said deduction; and the said auditor has carried upon the duplicate delivered to the treasurer, the entire valuation of said shares so made without allowing and expressly refusing to allow any deductions therefrom by reason of any *bona fide* indebtedness of said shareholders to others.

The complainant further avers that by No. 2839 of the Revised Statutes of Ohio, it is declared that: "Any taxes assessed on any shares of stock or the value thereof, of any bank or banking association shall be and remain a lien upon such shares from the first Monday in May in each year, until such taxes are paid; and in case of non-payment of such taxes at the time required by law, of any shareholder, and after notice received of the county treasurer of the non-payment of such taxes, it shall be unlawful for the cashier or other officers of such bank or banking association, to transfer or permit to be transferred, the whole or any portion of said stock until the delinquent taxes thereon, together with costs and penalties shall be paid in full, and no dividend shall be paid on any stock so delinquent so long as such taxes, penalties or costs or any part thereof remain due and unpaid."

The complainant says that said defendant further threatens in case of non-payment of said taxes so unlawfully added to give notice provided for in said section, and thereby prevent the transfer of any of said shares of stock from said shareholders or any other persons to whom they or either of them may have sold the same. The complainant further says that if the shares of said stockholders are permitted to be sold under the lien created on them by said No. 2839 of said Revised Statutes of Ohio, or otherwise, irreparable injury would not only be done to each of the shareholders, but also to the complainant, and it would thereby be subjected to great loss of standing and credit, for the redress of which the law affords no remedy, and the franchises with which your orator is invested by the act of Congress as aforesaid, would be greatly impaired in value; and the disability imposed upon the complainant to make transfers or to pay dividends of or upon shares, upon which such illegal tax remains unpaid, would injuriously affect all its ordinary

business, and introduce confusion and uncertainty into its transactions and the consequent loss of public confidence upon which its success depends; and if the complainant should pay said il-
312 legal taxes and attempt to deduct the amount from dividends or other funds of the shareholders in its hands, it would be subjected to a great multiplicity of suits by its separate shareholders by so doing, and in any event a great number of suits would be rendered necessary to adjust the rights of all of the parties and the complainant would be subjected to great expense and irreparable injury thereby.

The complainant further avers that heretofore, to wit, at a date prior to the April term of this court in the year 1887, the complainant brought a suit against Horatio N. Whitbeck as treasurer of said Cuyahoga county, who then held such office, to enjoin the collection of the excessive taxation of shares of said complainant growing out of the refusal of the taxing officers of the said county to allow the deduction of *bona fide* debts of the stockholders from the assessed value of said shares, said Whitbeck then representing the same interest, sustaining the same relation and charged with the same duties to the public as does the present defendant; and in said suit this complainant alleged by its bill the refusal by the then auditor of said county to allow the deduction of *bona fide* debts of said shareholders from the value of shares of stock of said complainant owned in large part by the same stockholders as those above named, and in which action said treasurer of said county, admitting the said refusal to allow said deduction so joined issue as to present the question of the right of said owners of said shares to said deduction in view of the laws of Ohio, the said laws being the same as the present laws of the State, and those under which the taxing officers of said county acted in 1892 and 1893, in making assessments and in refusing deduction to be made of *bona fide* debts from the valuation of said shares; and the complainant says that upon the issue so joined the said court at its April term, A. D. 1887, held and determined that said shareholders were, by law, entitled to said deduction of *bona fide* debts from the value of their said shares to an equal amount fixed for taxation; and in said action the court gave judgment perpetually enjoining said treasurer from collecting any tax or assessment on the valuation of said shares to an amount equal to the said debts from which said deduction was sought to be made and disallowed by said auditor, on the ground that said disallowance was a discrimination against money invested in national bank shares, prohibited by the act of Congress; and the complainant alleges that said issue so determined and adjudged was be-
313 tween the same parties, involved the same subject-matter and legislation, and the judgment given therein is wholly unreversed and still in full force and operation.

The complainant further says that on the 19th day of December, 1893, it tendered to said defendant, at his office as treasurer of said county in lawful money of the United States the entire tax due from the said shareholders of the complainant on their respective shares of stock, which said defendant refused to receive unless said

complainant would also pay the unlawful tax on the shares of stock from which said deduction as aforesaid, are authorized and required; and the complainant now and here brings into court the sum due said defendant as such treasurer for the tax lawfully levied on said shares against the complainant's said stockholders, and submits and subjects the same to the order and direction of the court.

Your complainant further avers that there stands charged on the duplicate of said treasurer for the current year a tax of $300.00 upon the shares of stock of all the shareholders of complainant in said bank, which tax was professedly levied by the council of the city of Cleveland, by ordinance No. 3222 passed September 18th, 1893, a copy of which is hereto attached marked "Exhibit A" and made a part of this bill, the levies of which ordinance were certified in accordance with its provisions to the auditor of said county and by him placed upon the tax-lists of his office and the duplicate of the defendant for collection. The complainant says that by the terms of said ordinance the said city council ordained that "to provide for the construction and repair of sewers and for the payment of maturing principal and interest of bonds issued for cost of sewers therein, they *are* hereby levied on each dollar's valuation taxable property on the tax-list of 1893 within the limits of certain sewer districts among which is sewer district No. 9, ½ mill;" that said sewer tax against the shareholders of the complainant was levied in professed compliance with the terms of said ordinance on the shares of the shareholders of complainant, its bank being located in said sewer district.

The complainant further says that the only power possessed by the city council to levy tax and assessment for the construction and maintenance of sewers of the kind described in said ordinance is derived from sections 9295 and 9302 of the Revised Statutes of Ohio, being section 6 and 13 of the act entitled "An act to provide for the construction and repair of sewers in cities of the second grade of the first class." Passed April 16th, 1893, O. L. 143 (Re-
314 vised Statutes of Ohio, 9290, *et seq.*), by which section the power of the council is limited and restricted to assessments of the costs and expenses of constructing sewers to and "upon lots and land bounding or abutting on the streets, lanes, alleys, highways, market-places, public landings, commons or public grounds in or along which the same shall pass by the foot front or according to the valuation of the same on the tax-lists or according to the benefits, as it (the council) shall determine." And the complainant says that said city council, in the passage of said ordinance, exceeded its power in the premises, because the complainant says that said council was wholly without other authority in the premises than that conferred by said section of said act, which sections imparted no authority to levy any tax or assessment upon the personal property within the limits of the sewer districts, to defray the cost and expense of either the construction or maintenance of the sewer, wherefore the complainant alleges that said tax purporting to be a sewer tax standing upon the duplicate — the said defendant is wholly illegal and void. Inasmuch, therefore, as the complainant is rem-

ediless by the strict rules of law and relievable only in equity, it prays that said Joseph C. Shields, as treasurer of said Cuyahoga county may be made party defendant to this bill of complaint. that a writ of subpœna may issue against him and that he may answer the premises; that your honors will grant unto your petitioner during the pendency of this suit your writ of injunction strictly restraining and enjoining the said Joseph C. Shields, as treasurer of said county of Cuyahoga, and his successor in office, from collecting or attempting to collect from your orator or said individual shareholders by distraint or otherwise, any of said taxes as the same stand charged on said duplicate and that said respondent and his successors in office may be decreed to receive in full of said taxes the sum so tendered by your petitioner, and so brought into court, and to be perpetually enjoined from collecting or attempting to collect the remainder of said taxes being the portion so illegally assessed and for such other and further relief in the premises as equity and good conscience require.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, of the Eastern Division. }

Be it remembered that this 22nd day of December, A. D. 1893, personally came before me C. L. Murfey, who being by me
315 first duly sworn, deposes and says that he is the cashier of the complainant in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; that all the allegations and statements therein contained as derived from the information of others he believes to be true, and all other allegations and statements therein named are true in substance and in facts.

C. L. MURFEY.

Sworn to before me and in my presence subscribed this 22nd day of December, A. D. 1893.

[SEAL.] LELAND INGERSOLL,
Notary Public.

Tax fee, 40c.

EXHIBIT "A."—Ordinance 3222.

No. 3222. An ordinance to levy a tax to provide for the construction and repair of sewers and for the payment of maturing principal and interest of bonds issued for cost of sewers in certain sewer districts named herein.

SEC. 1. Be it ordained by the council of the city of Cleveland that to provide for the construction and repair of sewers and for the payment of maturing principal and interest of bonds issued for cost of sewers therein, there are hereby levied on each dollar of valuation of taxable property on the tax-list of 1893, within the limits of the following sewer districts respectively, the following respective rates:

In sewer district No. 1, 3 mills.
In sewer district No. 2, ½ mill.
In sewer district No. 3, ½ mill.

In sewer district No. 4, 3 mills.
In sewer district No. 5, 3 mills.
In sewer district No. 7, 3 mills.
In sewer district No. 9, ½ mill.
In sewer district No. 10, 3 mills.
In sewer district No. 11, 2 mills.
In sewer district No. 12, 3 mills.
In sewer district No. 14, 2 mills.
In sewer district No. 15, 3 mills.
In sewer district No. 16, 3 mills.
In sewer district No. 17, 3 mills.
In sewer district No. 18, 3 mills.
In sewer district No. 19, 3 mills.

In Commercial Street sewer district, 3 mills.

316 SEC. 2. That the city clerk is hereby directed to certify the foregoing levies to the county auditor as provided by law.

SEC. 3. This ordinance shall take effect and be in force from and after its passage and due approval by the board of equalization and assessment. Passed September 18th, 1893.

A. J. MICHEAL,
President of the Council.
HOWARD H. BURGESS, *City Clerk.*

Approved by the mayor September 21st, 1893.

Which said bill of complaint was endorsed as follows, to wit: U. S. circuit court, northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland, Ohio, *vs.* Joseph C. Shields, as county treasurer, etc. Bill of complaint. Filed December 26th, 1893. Irvin Belford, clerk U. S. circuit court, N. D. O. Boynton & Horr.

Afterwards, to wit, on the same day, a subpœna in chancery was issued out of the clerk's office of this court in the words and figures following, to wit:

Subpœna.

THE UNITED STATES OF AMERICA, } *ss:*
Northern District of Ohio, Eastern Division, }

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to summon Joseph C. Shields, as treasurer of Cuyahoga county, Ohio, if he be found in your district, to be and appear in the circuit court of the United States, within and for the district aforesaid, at Cleveland, on the first Monday in March next to answer a certain bill in chancery, filed and prohibited in the said court against him by the Mercantile National Bank of Cleveland, Ohio. Hereof he is not to fail under the penalty of the law thence ensuing and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, this 26th day of December, A. D. 1893, and in the 118th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk*,
By JOHN VAN NOSTRAN,
Deputy Clerk.

317 *Memorandum.*

The said defendant is required to enter his appearance in this suit in the clerk's office of this court, on or before the first Monday of February, A. D. 1894, otherwise the said bill may be taken *pro confesso*.

IRVIN BELFORD, *Clerk.*

Which subpœna was endorsed as follows: No. 5197. United States circuit court, northern district of Ohio, eastern division. In chancery. The Mercantile Nat'l Bank *vs.* Joseph C. Shields, treas. Subpœna. Returnable February 5th, 1894. Rule day for appearance February 5th, 1894. Rule day for answer March 5th, 1894. Returned and filed December 27th, 1893. Irvin Belford, clerk. Boynton & Horr, complainant's solicitors.

Afterwards, on December 27th, A. D. 1893, said subpœna was returned and filed in the clerk's office with the following marshal's return endorsed thereon, to wit:

NORTHERN DISTRICT OF OHIO, *ss:*

On the 27th day of December, 1893, at Cleveland, Ohio, I made due service of this writ upon the within Joseph C. Shields, treasurer of Cuyahoga county, Ohio, by delivering to him a true and duly certified copy thereof.

W. C. HASKEL, *U. S. Marshal*,
By B. F. SEYMOUR, *Deputy.*

Service, $2.00; copy, 50c.; travel, 50c.; return, 10c.;—$3.10.

Afterwards, to wit, on July 26th, 1893, an order was made and entered herein as follows:

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO,
vs.
JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio.

318 On motion of the orator, by its attorney, after due notice given to the respondent and good cause being shown therefor, it is ordered that on an undertaking being given in the sum of $6,000 with sureties to the approval of the clerk of this court, a preliminary injunction issue herein restraining and enjoining said respondent, Joseph C. Shields, as treasurer of the county of Cuyahoga and State of Ohio, and his successors in office, from collecting or attempting to collect from the orator or from its individual shareholders named in said bill by distraint or otherwise, and of the taxes

named in the bill as the same stand charged upon the duplicate of Cuyahoga county, except that said respondent is hereby given authority without prejudice to his rights in the premises, to receive from the orator $6,106.32 being the taxes by said orator's bill admitted to be justly due from it to said respondent and that said writ remain in force until the further order of this court.

And afterwards, to wit, on December 26th, 1893, an injunction bond was filed herein, which bond reads and is in the words and figures following, to wit:

Injunction Bond.

"Know all men by these presents, that we, The Mercantile National Bank of Cleveland, Ohio, E. R. Perkins, are held and firmly bound unto Joseph C. Shields, as treasurer of Cuyahoga county, Ohio, and his successors, in the sum of six thousand dollars, to the payment whereof we bind ourselves, our successors, heirs, executors, administrators, firmly by these presents.

Sealed with our seals and dated this 26th day of December, A. D. 1893.

The condition of the above obligation is such that, whereas, the said The Mercantile National Bank of Cleveland, Ohio, as filed in the circuit court of the United States for the northern district of Ohio, a bill in chancery against the said Joseph C. Shields, as treasurer aforesaid, and has obtained an allowance of an injunction as prayed for in said bill from the Honorable A. J. Ricks, judge of the district court of the U. S. Now, if the said The Mercantile National Bank of Cleveland, shall abide the decision of the said court in said cause and pay all moneys and costs which shall be adjudged against it in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

THE MERCANTILE NATIONAL BANK
OF CLEVELAND, OHIO.
By CHARLES F. MURFEY, *Cashier.* [SEAL.]
E. R. PERKINS. [SEAL.]

319 Which bond was endorsed as follows, to wit: U. S. circuit court, northern district of Ohio. No. 5197. The Mercantile National Bank of Cleveland, Ohio, *vs.* Joseph C. Shields, as treasurer of Cuyahoga county, Ohio. Injunction bond. Approved and filed on December 26th, 1893. Irvin Belford, clerk.

Afterwards, to wit, on December 26th, 1893, a writ of injunction was issued out of and under the seal of the clerk's office of this court in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } *ss:*

Writ of Injunction.

The President of the United States of America to Joseph C. Shields, as treasurer of Cuyahoga county, Ohio:

Whereas, the Mercantile National Bank of Cleveland, Ohio, citizen of the State of Ohio, has filed on the chancery side of the circuit court of the United States, within and for the northern district of Ohio, a bill against Joseph C. Shields, as treasurer of Cuyahoga county Ohio, and has obtained an allowance of an injunction as prayed for in said bill from Augustus J. Ricks, U. S. district judge, one of the judges of said court. Now, therefore, we *have* in regard to the matters in said bill contained do hereby command and strictly enjoin you, the said Joseph C. Shields, as treasurer of Cuyahoga county, State of Ohio, and your successors in office, from collecting or attempting to collect from the orator of the Mercantile National Bank of Cleveland, Ohio, or from its individual shareholders named in said bill, by distraint or otherwise, any of the taxes named in the bill as the same stand charged upon the duplicate of Cuyahoga county, except that said respondent is hereby given authority, without prejudice, to his rights in the premises to receive from the orator $6,106.32, being the taxes by said orator's bill admitted to be justly due from it to said respondent, and that said writ remain in force until further order of this court. Which commands and injunctions you are respectfully required to observe and obey until our said circuit court shall make further order in the premises. Hereof fail not under penalty of the law thence ensuing.

320 Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of December, A. D. 1893, and in the 118th year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
By JOHN VAN NOSTRAN,
Deputy Clerk. [SEAL.]

Which said writ of injunction had the following endorsement thereon, to wit: No. 5197. United States circuit court, northern district of Ohio, eastern division. In chancery. The Mercantile National Bank *vs.* Joseph C. Shields, as treasurer of Cuyahoga county, Ohio. Injunction. Returned and filed December 27th, 1893. Irvin Belford, clerk. Boynton & Horr, complainant's solicitors.

Afterwards, to wit, on December 27th, A. D. 1893, said writ was returned and filed herein with the following marshal's return endorsed thereon: Northern district of Ohio, *ss:* On the 27th day of December, 1893, Cleveland, Ohio, I made due service of this writ upon the within-named Joseph C. Shields, as treasurer of Cuyahoga county, Ohio, by delivering to him a true and certified copy thereof.

W. C. Haskel, U. S. marshal, by B. F. Seymour, deputy. Service, $2; copy, 50c.; travel, 50c.; return, 10c.—$3.10.

Afterwards, at the October term, A. D. 1893, of said court, to wit, on February 5th, A. D. 1894, an order of continuance was made herein as follows, to wit:

Continued.

THE MERCANTILE NATIONAL BANK *vs.* JOSEPH C. SHIELDS, Treas. } No. 5197. Equity.

This cause is continued to the next term of this court, to wit, on March 5th, A. D. 1894, a decree *pro confesso* was entered herein upon the order book of this court, in the following words:

321 THE MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant, *vs.* JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Respondent. } No. 5197. In Equity.

Decree pro Confesso.

It appearing to the court that the respondent, Joseph C. Shields, as treasurer, etc., has failed to enter his appearance herein, and has failed to answer to the bill of complaint, and that the time therefor has expired, it is found that said respondent, Joseph C. Shields, as treasurer, etc., is in default, and it is therefore ordered that the bill of complaint herein be taken as true, and that a decree *pro confesso* be entered against said respondent.

BOYNTON & HORR,
Solicitors for Complainant.

March 5th, 1894.

Continued.

Afterwards, at the February term, A. D. 1894, of this court, to wit, on March 31st, 1894, an order of continuance was made and entered herein as follows, to wit:

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, *vs.* JOSEPH C. SHIELDS, as Treasurer, etc. } No. 5197. Equity.

This cause is continued to the next term of this court.

Afterwards, at the April term, A. D. 1894, to wit, on April 5th, 1894, a final decree was made and entered herein as follows, to wit:

Final Decree.

THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio.
} Equity. No. 5197.

This cause came on for hearing on the complainant's bill
322 of complaint and the evidence adduced in open court, the respondent not having appeared in the action, and being in default of answer to said bill, whereupon the court being fully advised in the premises, finds that each and every allegation of the bill of complaint is true. It is therefore ordered, adjudged and decreed that the order of injunction hereof *for* in this case issued against the respondent be made perpetual, and that said respondent and his successor in office as treasurer of Cuyahoga county, Ohio, be and they hereby are forever enjoined from in any manner collecting or attempting to collect from the complainant or from its individual shareholders the sewer tax of $300.00 assessed against said complainant and its shareholders on the valuation of its shares, for taxation for the year 1893; and forever enjoined from in any manner collecting or attempting to collect the sum of $4,527.36, taxes for the year 1893, assessed against the shareholders of the complainant named in the bill of complaint.

It is further ordered, adjudged and decreed that on payment by the complainant to the respondent in the June, 1894, collection of the sum of $6,106.32, such payment shall be in full satisfaction of all claims of the respondent or of his successor in office for the taxes for year 1893 standing upon his tax duplicate charged against said complainant, and its individual shareholders on the valuation for taxation of its capital stock, and that the respondent pay all the costs of this action.

Afterwards, on April 6th, 1894, the motion to vacate the decree herein was filed herein, in the words and figures following, to wit:

Motion.

United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant,
vs.
JOSEPH C. SHIELDS, as Treasurer of Cuyahoga County, Ohio, Respondent.

Motion to vacate decree in part and for leave to plead.

Now comes the respondent and moves the court here to set
323 aside and vacate the decree entered in this case so far as it concerns the sewer tax therein mentioned and enjoined, and

for leave to plead to the bill of complaint filed herein so far as it concerns the sewer tax therein mentioned and complained of.

JAMES LAWRENCE AND
ESTEP, WEH, HENRY,
Attorneys for Respondent for said Sewer Tax.

We hereby accept notice of the filing of the above motion and that the same will be called up and heard as soon as the attention of the court can be secured.

BOYNTON & HORR,
Attorneys for Complainant.

Which said motion was endorsed as follows, to wit:
United States circuit court. The Mercantile National Bank of Cleveland, Ohio, complainant, *vs.* Joseph C. Shields, as treasurer of Cuyahoga county, Ohio, respondent. 5197. Motion to vacate decree in part for leave to plead. Filed Apr. 6th, 1894. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Afterwards, at the April term, A. D. 1894, to wit, on April 19, 1894, an order modifying the final decree was made and entered herein in the following words, viz:

Order.

THE MERCANTILE NATIONAL BANK OF CLEVELAND
versus
JOSEPH C. SHIELDS, Treasurer, etc.
} No. 5197. Equity.

By consent of the complainant the decree heretofore entered in this cause is vacated in so far as it relates to the sewer tax therein referred to, and by the further consent of the complainant, its
324 prayer for an injunction against the collection of said sewer tax is denied. In all other respects said decree is to remain in full force.

Enrolled and signed this 22nd day of August, A. D. 1895.

IRVIN BELFORD, *Clerk*,
Per H. M.

JAMES MOLYNEAUX, a witness produced on behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. You may state your name, age and place of residence.
A. Joseph R. Molyneaux; age, 59; residence, 832 Willson avenue, in the city of Cleveland.
Q. 2. You may state, Mr. Molyneaux, whether or not you were a member of the late city board of equalization for Cleveland.
A. I was.

Q. 3. The one that went out of office upon the holding of the supreme court, that the special act under which you had been performing your duties was unconstitutional?

A. Yes, I was a member of that board.

Q. 4. How long was you a member of it?

A. 6 years and two or three months.

Q. 5. Consecutively?

A. Yes.

Q. 6. From somewhere in 1892 to 1898—from the first Monday in May, 1892, till the final decision of the supreme court?

A. I don't know when it was.

Q. 7. You may state whether or not your board had occasion to fix values for taxation of bonds and stocks and promissory notes and credits during the period of your membership of the board.

To which question defendant objected, and to any testimony of this witness giving any acts of the board in regard to taxation matters as binding in this case or any other case for the reason that the supreme court of the State of Ohio held the board to be wholly illegal in its decision of June, 1898.

A. We did have occasion to fix values.

Q. 8. You may state whether the value that you so fixed went upon the duplicate of the county, and whether or not the tax
325 assessed upon that value was paid during the six years or more of your connection with the board.

To which question defendant objected for the reason that the acts of said board were void, and that courts have enjoined their action.

A. I presume they had been. I have no knowledge that the taxes have been paid.

Defendant objects to the answer.

Q. 9. You may state at what percentage of their actual value, bonds, stocks, promissory notes and other moneyed credits went upon the duplicate, or were assessed at during your membership of the board in the county.

To which question defendant objected on the ground that section 2739 requires all taxing officers and parties listing personal property to return the same at their true value in money, and that the statutory rules determine the amount they should return them at.

A. We had no jurisdiction outside of the city. My understanding of the position was as a member of the board of equalization it was our duty to equalize, as well as to fix values; that upon the theory of equalization if a party returned two-thirds value, we accepted it as correct.

Q. 10. Suppose he returned 60 per cent. of his moneyed securities?

A. If we were satisfied it was actually 60 per cent. without any doubt of the full value, we would accept that as correct.

Q. 11. You may state what you know of the existence of a rule

in the city with the board of equalization, or with those that had charge of assessing personal property, as to a percentage of actual value at which their property has been assessed for past years.

To which question defendant objected, and further objected to witness giving any rules in the face of the statute requiring them to assess the same at the true value in money.

A. We understood that that had been the custom, to accept about 60 per cent. of the actual value.

Defendant objected to the answer.

Q. 12. You may state how long that custom has existed to your knowledge.

A. At least six years.

Q. 13. What do you know of its existence prior to the time you went on the board?

To which question defendant objected.

A. From information given by former members of former boards.

326 Defendant objected to the answer.

Q. 14. From your information so obtained what was the percentage formerly assessed upon actual value of such property?

To which question defendant objected as calling for hearsay evidence.

A. Personal property about 60 per cent.

Q. 15. Including notes, bonds, credits, etc.?

A. Yes, about 60 per cent.

Q. 16. What do you know of the action of the various township assessors during those years respecting the value that they fixed upon such securities?

A. I have no knowledge of township assessors or their work.

Q. 17. You said a few moments ago in effect that you regarded it to be your duty as a member of the board of equalization to equalize values as well as to fix a value?

A. Yes.

Q. 18. You may state whether or not in equalizing values you were required to adhere to the 60 per cent. rule pretty strictly for the valuation of moneyed securities?

To which question defendant objected as leading, suggestive and incompetent.

A. Yes.

Q. 19. Could you have equalized values and made them substantially uniform, without adhering to the practice of valuing moneyed securities at about 60 per cent. of their actual value?

To which question defendant objected on the grounds last stated.

A. I think not.

Q. 20. And if you have any reason why you could not, you may give it.

A. I have none.

Q. 21. What do you know of valuation fixed on national bank shares in the city for the last ten years?

A. I have no knowledge of it whatever.

Q. 22. The valuation of these shares did not come before your board?

A. No, sir.

Q. 23. To what extent has the board of which you were a member, added values of moneyed securities during the six years of your membership thereof—approximate?

A. It would be difficult to divide personal property over and above that determined by the assessors. We have added in the neighborhood of $4,000,000 per year.

Q. 24. How much of that has been intangible property?

327 A. I could not say.

Q. 25. Can you approximate? Give your best judgment.

A. I don't know that I could without the footings of the different wards for the different years. I haven't the remotest idea how much upon any one class of property.

Q. 26. In these additions amounting, as you say, to $4,000,000 per year during your membership of the board, you may state at what percentage of actual value that amount of property was, or about what percentage.

To which question defendant objected.

A. At about 60 per cent.

Q. 27. So that in all the additions which you say amounted to some $4,000,000 a year during the six years of your membership, the valuation fixed by you as a board was about 60 per cent. of the actual value of the property?

A. Yes.

Q. 28. And you are unable to give approximately the percentage of intangible to tangible property, or the ratio of intangible to tangible property?

A. Yes.

Q. 29. Would you say it amounted to one-fourth, take bonds, stocks, credits and mortgages?

A. Yes, I think so.

Q. 30. So that for the six years of your membership of the board, you think, would you, that you added a million a year of intangible property or moneyed securities to the tax duplicate of the county?

A. I think so.

Q. 31. At what percentage do you say you made that addition to its actual value?

A. 60 per cent.

Q. 32. You may now state whether or not you have any knowledge as to how prevalent or extensive the 60 per cent. rule is throughout the State, and if you have any knowledge, how you obtained it?

To which question defendant objected.

A. We presumed that that was about the same as was fixed in the other cities in the State. I think it was from information from the members of the board of equalization at Cincinnati.

To which answer defendant objected.

Cross-examination of JOSEPH B. MOLYNEAUX.

By Mr. MONNETT:

Q. 33. And all your acts that you have been testifying to have been declared by the supreme court as illegal and void, be-
328 cause your board was constituted under an unconstitutional law?

To which question plaintiff objected.

A. I do not so understand.

Q. 34. You stated that you had duties to perform in the way of equalizing. Why did you say that?

A. That's the purpose for which we were appointed.

Q. 35. That was one of the purposes for which you took your oath of office?

A. Yes.

Q. 36. You did equalize, or tried to?

A. As we understood our duties.

Q. 37. Why did you adhere so closely to equalizing, and ignore the statute that you should find the value of bonds, stock and joint stock companies at the true value of money, and fix them as low as 60 per cent.? Why wasn't one part of the statute as binding on you as another?

To which question plaintiff objected.

A. Customs and former practice had made that part of it, as we understood it, proper.

Q. 38. Customs and former practices had also made an equality of value, had they not?

A. Yes.

Q. 39. You ignored what you call custom in one place and observed it in another? Why was that?

A. I don't know as we ignored custom in one place and adhered to it in another.

Q. 40. The statute requires you to equalize and you tried to do that?

A. Yes.

Q. 41. And the statute also requires you to find the true value in money, and that you disobeyed. Why did you ignore the one and follow the other?

A. My recollection is we followed the supreme court ruling. I cannot cite the case now.

By Judge BOYNTON:

Q. 42. You mean of the United States?

A. I don't know.

Q. 43. Do you mean the Whitbeck case?

A. That's one of them.

Q. 44. The Whitbeck case, as you understood, if the other property of the city is only a given per cent., that the national banks cannot be higher than that per cent. Is that what you followed substantially?

A. Substantially.

Q. 45. You took the national bank returns as standard, and brought the others down to that?

A. I don't think other property should be forced to pay more than bank property.

329 Q. 46. If your rule was adopted, and the national banks made return to your board under oath, $12,272,000, being the amount they returned for the year 1896 to the Comptroller of the Currency, will you tell how much under your rule you would return them for taxation? Under your rule how much would you have put them on the tax duplicate for?

To which question plaintiff objected.

A. $7,363,020.

Q. 47. If you had put them in at 66⅔, you would not have disturbed it? They would not have been contrary to the rule of equality?

A. They would not.

Q. 48. How much would two-thirds have been of that, and still come within the rule? You said if property had appeared on the tax duplicate at 66⅔ you would not disturb it, and considered it upon the duplicate as a fair average of the other.

A. Yes.

Q. 49. Taking that rule, if the national banks that reported under oath $12,272,000, had been presented to you at $8,180,000—two-thirds—would you have considered them as fairly treated with other property?

A. The difference would have been so slight we should not have called their attention to it.

Q. 50. Would you have considered it fairly treated at $8,180,000?

A. Yes.

Q. 51. Did you ever have any instructions from the county auditor or other taxing authority to change the statute that required you to return the stocks and bonds and investments for anything less than the true value thereof in money?

A. I have no recollection of any such instruction.

Q. 52. Whenever you did that you did it upon your own motion or your own idea of the law?

A. My idea of justice, one class of property with another.

Q. 53. Isn't it a fact that you testified before the taxation committee that property on the west side was taxed at about 100 cents on the dollar, while some was much lower?

A. Certain pieces of it, not the whole.

Q. 54. So that under the rule that you have voluntarily adopted outside of the statute, and taking your lowest estimate, your banks

of this city would have made it $7,363,000 and your highest
330 $8,180,000, while they actually were put on the tax duplicate at only $6,036,000. If your rule had been followed as to them, they would have been raised from $1,250,000 to $2,000,000?

To which question plaintiff objected as immaterial.

A. National banks did not come before our board.

Q. 55. Assuming that the plus amount of the county auditor as testified to is correct, that they were on the tax duplicate for $6,632,020, had such credits come before you, or such stocks and bonds, and you would put them on at 66⅔, you would have had to raise them about $2,000,000?

A. We should have brought them up to at least 60 per cent. of the face value.

Q. 56. Of what they returned under oath?

A. Yes.

Q. 57. That would be the minimum?

A. Yes.

Q. 56. Isn't 60 per cent. rather a flexible term that you have used to arrive at true values, as the auditor has given it? Do you take the arbitrary 60 per cent., regardless of the true merit?

A. To arrive at average values.

Redirect examination of JOSEPH B. MOLYNEAUX.

By Judge BOYNTON:

Q. 59. 60 per cent. is the average value?

A. Yes.

Q. 60. And if the bank had not returned to you for taxation, would you have put it in at 60 per cent. of its value as returned?

A. Of its actual value.

Q. 61. And in doing so would you have conformed to what you have understood to be the prevalent rule in this county for at least six years?

A. Yes.

Q. 62. Will you state whether or not your board, during your occupancy, treated deposits in savings banks in the city of Cleveland as credits belonging to deposits?

A. We permitted it to be used as an offset for credits.

To which answer defendant objected.

Q. 63. You permitted it to be used, not as money but as a credit?

A. As a credit, yes.

Q. 64. Why? Because it was payable on time?

A. Yes, by reason of the rule of savings banks that they might require notice before the money shall be drawn. It was not subject to check on demand.

331 Recross-examination of JOSEPH B. MOLYNEAUX.

By Mr. MONNETT:

Q. 65. Isn't it a fact that each of these savings banks just referred to have honored drafts and checks, and keep a running account the same as any or all banks, and have not enforced that rule but once in thirteen years?

To which question plaintiff objected.

A. I know that they received deposits on that condition, that they may require notice before it is paid. It is printed in their pass book.

Q. 66. But they never have enforced that rule, except in the panic of 1893?

A. I don't know. They may enforce it at any time.

Q. 67. But so far as actual practice is concerned, you can draw it out whenever you wish without any notice?

A. Yes.

Q. 68. That's another one of the customs of Cleveland that occurs in this taxation question, the custom of savings banks?

A. It might be so considered.

Redirect examination of JOSEPH B. MOLYNEAUX.

By Judge BOYNTON:

Q. 69. You may state whether or not that time rule of the savings bank is general throughout the savings banks of the city?

A. I think it is. The board of equalization worked upon that rule by reason of the written information from the corporation counsel or director of law upon their application to him for an opinion upon that subject.

Q. 70. The director of law of this city gave you an opinion stating what?

A. That these deposits were to be treated as credits.

Recross-examination of JOSEPH B. MOLYNEAUX.

By Mr. MONNETT:

Q. 71. Did you take the converse of the rule, that if they were to be treated as credits for the customer, they were to be assets in the hands of the bank? That the bank return them for taxation?

A. The bank returned them as deposits.

Q. 72. They were time certificates. They could not draw them only on notice. You let the bank treat them as deposits, and the customers treat them as time certificates?

A. On the theory that savings banks to a great extent were holding mortgages as an offset to deposits.

Q. 73. Did these savings banks you refer to return at any
332 time or any place or anywhere these notes that they held for money loaned out, whether mortgage notes or otherwise?

A. Not that I know of.

Q. 74. While you was doing that equalizing business, you did not equalize them on that?

A. We never took their mortgages under consideration. We never made a list of them.

Q. 75. Why was that?

To which question plaintiff objected as not being cross-examination of anything that plaintiff inquired about in the direct examination.

A. Because we treated them as a debt, and an offset to credits.

Q. 76. Aren't they obliged to return their debts and credits before you can strike a balance? Or did you have a custom of that kind in the city and follow the statute in that particular?

A. Perhaps that's the case.

Q. 77. Whatever is a violation of the tax laws in this city, you denominate that a custom?

A. Not entirely.

Q. 78. What do you define a custom to be?

A. A practice.

Q. 79. The habitual violation of a statute?

A. In some cases.

Whereupon the further taking of these depositions was adjourned until August 18th, 1898, at 9 o'clock a. m.

AUGUST 18TH, 1898—9 a. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: W. W. Boynton, counsel, N. T. Horr and E. S. Cook, solicitors for complainants. Frank S. Monnett, assistant attorney general, P. H. Kaiser, solicitor for Cuyahoga county, Ohio, for respondents.

NORTON T. HORR, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. State your name, age and residence.

333 A. Norton T. Horr, 36 years, Cleveland, Ohio.

Q. 2. What is your business?

A. Attorney-at-law.

Q. 3. Formerly a member of the firm of Boynton & Horr?

A. Yes.

Q. 4. You may state, Mr. Horr, if you were at Columbus at any time for the purpose, among other purposes—of ascertaining what record had been made by the State board of equalization for bank shares in the year 1897, and if so, whether you examined the record.

A. I stopped at Columbus on the 31st day of December, 1897, for

the purpose of examining the records of the proceedings of the State board for that year, and I examined the records so far as they were then made up.

Q. 5. You may state whether there was anything in the record examined by you to the effect that the board adjourned at any of its meetings at the call of the governor.

To which question defendant objected.

A. The record, so far as it then existed, consisted of the record of the first three meetings of the board, and in each instance showed that the adjournment of each meeting had been made subject to the call of the secretary of the board, a man named Taylor. And there was no other record as to these three meetings of any other adjournment than that named.

Q. 6. Then the record examined by you did not show any adjournment subject to the call of any member of that board?

Same objection by defendant.

A. No, sir; it did not.

Q. 7. Mr. Horr, you may state what experience you have had in examination of books and making computations of figures and calculations and the like?

A. I have had frequent occasions for twenty years to make computations and work out mathematical conclusions in various matters.

Q. 8. You may state if you have examined the table No. 11 in the auditor of State's report for the year 1897, pages 326 to 334 inclusive, statement of valuation of national banks as returned to and fixed by the State board of equalization of bank shares for 1897, with a view of ascertaining the percentage on the total valuation that was fixed by the State board for its taxable value in the various counties of the State, and if so you may state the fact and the result.

334 To which question defendant objected on the grounds that it is not proper testimony for an expert to give, and as incompetent and irrelevant.

A. I made such examination and ascertained that according to that report the percentage of the assessed value of capital stock, surplus and undivided profits as fixed by the State board of equalization for incorporated national banks, after deducting the assessed value of the real estate, is a little over 61⅞ per cent. of the aggregate capital stock, surplus and undivided profit returned by all the banks throughout the State of Ohio. The percentage in the case of the aggregate national banks in the city of Cleveland I found to be 70.1 per cent. The percentage of the aggregate national banks in the State of Ohio, exclusive of those in the city of Cleveland, I found to be a trifle less than 60 per cent.

Q. 9. So that in the equalization made of the valuation of national bank shares by the State board at Columbus, the Cleveland banks were assessed 70.1 per cent., or about that, on their capital, surplus and undivided profits, while the other banks in the State were

assessed about 61 per cent. on the same—on their capital, surplus and undivided profits?

To which question defendant objected as leading, incompetent and irrelevant.

A. The other banks in the State a trifle less than 60 per cent. and the Cleveland banks 70.1 per cent.

Q. 10. Then, as I understand you, the national banks throughout the State, exclusive of those in the city of Cleveland—were valued by the State board of equalization at a little less than 60 per cent. of their capital, surplus and undivided profits; while the same board fixed the valuation of the Cleveland banks on their capital, surplus and undivided profits at a valuation of over 70 per cent.?

Same objection by defendant.

A. Yes, after deducting the assessed value of the real estate in each case.

Q. 11. You have taken out the assessed value of the real estate in all the banks?

A. Yes.

Cross-examination of NORTON T. HORR.

By Mr. BENNETT:

Q. 12. You may state, Mr. Horr, the process by which you arrived at the conclusions you did, which you have given in your examination-in-chief.

A. In ascertaining the ratio for the entire State I took the figures as given by the table No. 11 as correct, and ascertained
335 the aggregate of the capital stock, surplus and undivided profits; I deducted therefrom the assessed value of real estate and computed the percentage of the remainder represented by the aggregate of the value fixed by the State board, exclusive of real estate, as given in the table. In reaching the results, as to the national banks in the city of Cleveland, I followed the same process, using only those figures being under the statute relative to the banks in Cleveland, and followed the same process as to all the banks in the State of Ohio, excluding therefrom those in the city of Cleveland.

Q. 13. State whether or not you took into consideration any other moneyed capital except that invested as shown by table 11, referred to in the national banks of the State of Ohio.

A. My computation was based entirely on the information conveyed by table 11.

Q. 14. State whether you had any other factor to enter into this computation with regard to the banks in the city of Cleveland, except that which is contained in table 11.

A. None whatever.

Q. 15. How did you determine the percentage of the banks in the city of Cleveland as compared with the returns made by the various banks to the county auditor?

A. I made no effort to make any computations except those from the facts stated in this table.

Q. 16. How did you determine what percentage one number is of another?

A. By writing down upon paper the number of which I wished to ascertain the percentage, and writing down in front of it the number which constituted the devisor, and performing the necessary mathematical computation.

Q. 17. Then, you have the two factors, the divisor, and the dividend, as I understand you, so I can denominate them. State in your calculation with regard to the banks outside of the city of Cleveland and in the State of Ohio, what your dividend was in the computation.

A. It was the aggregate.

Q. 18. Give it in the figures.

A. I haven't my process here. I cannot give it. You can compute it yourself.

Q. 19. What was the aggregate of all the banks as returned outside of the city of Cleveland?

A. The dividend was the aggregate of value fixed by the State board, exclusive of real estate, as appears in table 11, and all the banks outside of those in the city of Cleveland.

336 Q. 20. I understand your process very well by which you arrived at this conclusion. But I thought when I asked the former question that you had your figures before you. You have not them with you?

A. I have not.

Q. 21. You cannot state what your divisor was, nor what your dividend was in arriving at the conclusion before stated?

A. Not from recollection.

Q. 22. Neither can you state what your devisor was or your dividend in regard to the computation concerning the banks in the city of Cleveland alone?

A. Not from recollection.

Q. 23. You have proceeded on the assumption entirely that the returns as made to the county auditor were the true returns or the true amounts of the taxable valuation of the property of the several banks referred to, have you not?

A. No, sir. I proceeded upon no assumption, because I was simply seeking to ascertain what results were derived from the use of this table, which I deemed to be true.

Q. 24. This table from which you have testified also shows the value as fixed by the State board of equalization of the various banks, does it not?

A. Exclusive of real estate it does.

Q. 25. In making the computation did you figure upon the basis as set forth in column 5 of the figures, viz., the column denominated "Value fixed by county auditors, exclusive of real estate?" Or did you base your calculations upon column 6, "Value fixed by State board, exclusive of real estate?"

A. I said before, exclusive of R. E. by column 6, value fixed by State board, exclusive of real estate.

Q. 26. So that in the percentage as given by you as the result of your calculations, the value of the real estate has not entered into it as a factor?

A. Not at all.

Q. 27. The only thing that you mean to testify to here is that using the combined values of the various banks referred to, dividing that by the other factor in your calculation, you arrived at the quotient in one instance of 70.1 per cent., and in the instance of the banks outside of the city of Cleveland, to the quotient of 60 per cent. Is that true?

A. That is correct, except that you have confounded the dividend with the divisor. The larger sum is the divisor, and the smaller sum is the dividend.

Q. 28. But you did not in this calculation add any factor
337 of truthfulness or untruthfulness to the reports as made in this paper?

A. I simply give you the results deduced mathematically from that table.

Q. 29. Do you know what the combined returns of the banks of the city of Cleveland, exclusive of real estate, is? If so, state.

A. I have no data in my present possession, except to recompute on this table.

Q. 30. You have made no data or calculation with regard to the amount returned to the Comptroller of the Currency by these same banks the same week that the returns were made to the county auditor for taxation, have you?

A. No, sir.

Q. 31. You assumed in your calculation, did you not, that for the purpose of establishing this percentage the amounts reported by the banks are the proper and the true amounts of their valuations?

A. It is not proper to say that I made any such assumption, because I did not start out with the intent of taking assumptions. I simply took percentages from that table.

Q. 32. Assuming then that their return is false in this that their true amount has not been set forth in their reports to the county auditor, and to the State board of equalization, would that not decrease the amount of percentage as fixed upon the banks in the city of Cleveland?

A. Any change in the figures used in this table would change the result. It would make the percentage greater if the amount they returned was too great, and less if the amount they returned was too small.

Q. 33. One of the issues in this case, as you probably know, being one of counsel, is that the reports as made out by the national banks in the city of Cleveland, and sent to the county auditor, and by him to the State board for equalization of the banks, is an untrue statement, and you do not wish to be understood as testifying in any regard that this statement is true or untrue, do you?

A. I simply wish to be understood as testifying to the results I derived from a mathematical computation based upon that report.

Q. 34. In regard to what was testified to by you as to the condition of the record in the auditor of State's office at Columbus—you have stated, have you not, that there were but the records of three meetings made up at the time you saw it?

A. As I remember it, that was the extent of the record at that time.

338 Q. 35. When did you see the record?

A. On the 31st of December, 1897.

Q. 36. Was the record at that time signed by the secretary?

A. It was signed by a man named Taylor as secretary of the board—each of those meetings.

Q. 37. Was it attested by him as secretary and signed by the governor?

A. It was not signed by the governor so far as I remember, but the record was in the handwriting of Mr. Taylor and he himself pointed it out to me as being the correct record of those meetings which had already been recorded.

Q. 38. Have you seen the record since December 31, 1897?

A. I have not.

Q. 39. Was it said to you by Mr. Taylor that that record was completed and verified by the board prior to the time you have seen the same?

A. I requested Mr. Taylor to show me the record of the proceedings of the State board of equalization for incorporated national banks, and he opened this book for me and said to me "That is the correct record of the proceedings so far as the record has yet been made. The subsequent meeting I still have in the original rough minutes, and have not made a permanent record."

Q. 40. Do you now recall the date of the minutes of the meetings that were recorded?

A. No, sir, I don't think I do.

Q. 41. Do you recall the dates from your reading of that record, of any one of the meetings?

A. Except inferentially, my recollection is that the date of the first meeting bore the date which I had theretofore ascertained to be the date at which the board should have met originally. Just what the actual date of the month was I cannot now state.

Q. 42. As far as your recollection goes, you cannot now state when the board went in session, whether their sessions were adjourned sessions, and whether they had *sine die* or not?

A. My recollection is that at the end of the record of the proceeding- of each of the three meetings on the back it said "Adjourned subject to the call of the secretary."

Q. 43. You have not now before you, while testifying, a copy of this record, nor have you the original record before you?

A. No, sir.

Q. 44. Did you at that time take a copy of the minutes?

339 A. I took a rough pencil copy of this portion, to which my attention was directed.

Q. 45. What did you do with it?

A. I kept it till we received a copy furnished by the auditor of State or Mr. Taylor.

Q. 46. Have you that copy before you?

A. No, sir.

Q. 47. So you are testifying entirely from you- recollection?

A. Yes.

Q. 48. Did the record show that there was any motion made by any member of that board to meet subject to the call of the secretary?

A. I don't think any of the minutes showed the making of a motion on that subject.

Q. 49. Did the minutes not show that there was a motion made to adjourn?

A. Possibly, I don't remember.

Q. 50. Do you remember whether or not it read, "Adjourn at the call of the secretary," or "Adjourn at the call of the governor"?

A. My recollection is limited on that. I think the language in the record was "Adjourn subject to the call of the secretary."

Q. 51. Are you one of the counsel for the complainants in the pending action, wherein the national banks of Cleveland are plaintiff- and R. S. Hubbard, as treasurer of Cuyahoga county, is defendant?

A. I don't think my name appears upon the petition, but I am interested for the plaintiff in each case.

Q. 52. Did you, as counsel or otherwise, appear before the State board of equalization for the purpose of having any inequalities corrected in their amounts fixed by that board for the purpose of taxation?

To which question plaintiff objected on the ground that it is not proper cross-examination, and witness is advised not to answer matters that are not pertinent to cross-examination.

A. No, I did not.

Q. 53. Do you know whether any of your clients, referring to the party complainant in this bill or in any other of the cases known as The National Bank Cases *vs.* Hubbard, treasurer, appeared before that board for the purpose of having any inequality or excessive valuations corrected or reduced?

To which question plaintiff objected as not cross-examination.

A. I do not see how I can answer that question of my own knowledge. I do not know.

340 Q. 54. Did you advise or counsel any of the parties plaintiff to these various actions whom you might have represented, to appear before said board, being the State board for equalizing bank values, and to seek to have that board correct any inequalities or excessive valuations upon the amounts returned for taxation?

To which question plaintiff objected as not cross-examination.

A. I do not think I am called upon to state what I advised my clients. I object to answer.

Q. 55. Your answer is, "I refuse to answer"?

A. I object to answer.

Q. 56. Do you refuse to answer because you were of attorneys for any of the parties in question?

A. My refusal is based upon my relations to the plaintiffs in this case.

Q. 57. Your refusal is based, is it not, upon the statutory privilege given you as an attorney testifying to confidential relations between attorney and client?

A. That would be adequate ground. There are several other grounds.

Q. 58. Do you assign that as one of the reasons?

A. Yes.

Redirect examination of NORTON T. HORR.

By Judge BOYNTON:

Q. 59. I forgot to ask you, Mr. Horr, what the comparison was—you made a comparison between the valuation put upon the shares of Cleveland banks and those put upon the shares of Cincinnati banks?

A. Yes.

Q. 60. Give the percentage of the Cincinnati banks.

To which question defendant objected.

A. I have already testified to percentages, and it appears on that table in that report that the aggregate national banks in Hamilton county are assessed at 54⅓ per cent. of their aggregate stock, surplus and undivided profits after deducting the assessed value of the real estate.

Q. 61. By the State board of equalization?

Objected to.

A. Yes.

AUGUST 22ND, 1898—2 p. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: W. W. Boynton, counsel; N. T. Horr and E. S. Cook, solicitors for complainants; Smith W. Bennett, assistant attorney general; P. H. Kaiser, solicitor for Cuyahoga county, Ohio, for respondents.

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EDWIN R. PERKINS, a witness produced on behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination of EDWIN R. PERKINS.

By Judge BOYNTON:

Q. 1. What is your name, age and place of residence?

A. Edwin R. Perkins; age, 65; Wickliffe.

Q. 2. What, if any, stock did you own in the Mercantile National Bank of Cleveland, Ohio, on the day preceding the second Monday in April, 1897, and on the Wednesday next preceding the second Monday in May, 1897?

A. 530 shares.

Q. 3. What, if any, legal claims and demands, whether for money or other valuable things, or for labor or services due or to become due to you, including deposits in bank or with persons in or out of this State other than such as are money, did you own on that day?

A. None.

Q. 4. What, if any, legal *bona fide* debts did you owe on that day, leaving out of the account all obligations to any mutual-insurance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received or which you believed at the time of making such acknowledgment to be other than a safe consideration therefor, and all acknowledgments of indebtedness made for the purpose of diminishing the amount of your credits to be listed for taxation, and to whom did you owe them?

A. $32,500.

Q. 5. To whom?

A. $30,000 to the Society for Savings and $2,500 to Hannah Pelton, of Perry, New York.

Q. 6. Did you file or cause to be filed with the auditor of Cuyahoga county, Ohio, an affidavit and demand marked for identification Plaintiff's Exhibit Perkins and heretofore offered in evidence in this case, which purports to be signed by you? (Showing witness a paper-writing.)

A. Yes, that's my signature.

Q. 7. You may state whether you delivered that to the cashier of the Mercantile national bank to be delivered to the auditor.

A. I did.

342 Q. 8. You may state whether you are the executor of the estate of Truman P. Handy.

A. I am sole executor.

Q. 9. Are you familiar with the credits due him or obligations due him on the day preceding the second Monday in April, 1897, and on the Wednesday next preceding the second Monday in May, 1897?

A. I am.

Q. 10. And are you familiar with the amount of bank stock he owned at that time?

A. I am.

Q. 11. What was due him in legal obligations on that day in amount?

A. There was considerable due him, but those debts were of no value and had so been appraised by the appraisers appointed by the probate court.

Q. 12. The claims that he had due him at that time have been appraised as valueless?

A. Yes.

Q. 13. Did he have any others?
A. No.
Q. 14. What amount of stock did he own?
A. 400 shares in the Mercantile national bank.
Q. 15. What legal *bona fide* debts did he owe?
A. $86,000.
Q. 16. To whom did he owe that?
A. He owed $55,500 to the Mercantile national bank, $30,000 to the Society for Savings, and $5,000 to the Western reserve bank in this city.
Q. 17. And evidenced by what character of obligations?
A. Promissory notes. I think those to the Mercantile national bank were all demand notes.
Q. 18. Are you acquainted with his handwriting?
A. Yes.
Q. 19. You may state whether the affidavit put into your hand and marked for identification "Plaintiff's Exhibit Handy," and which has been heretofore offered in evidence in this case, bears his signature.
A. That is Truman P. Handy's signature.
Q. 20. That is the genuine signature of Truman P. Handy?
A. Yes.
Q. 21. You are the president of the Mercantile bank?
A. I am.
Q. 22. And were through 1897 and in April?
A. Yes.
343 Q. 23. What notice did the bank have, to your knowledge, of any of the meetings of the State board of equalization for bank shares in 1897?
A. None so far as I know.

Cross-examination of EDWIN R. PERKINS.

By Mr. KAISER:

Q. 24. What did you say, Mr. Perkins, was your indebtedness on the day before the second Monday of April, 1897?
A. $32,500.
Q. 25. How divided?
A. $30,000 to the Society for Savings, and $2,500 to Hannah Pelton.
Q. 26. Where does she live?
A. At Perry, New York.
Q. 27. Where did she then live?
A. She then lived there.
Q. 28. What credits were owing to you on that same date?
A. No credits.
Q. 29. You held no notes against any persons on that date?
A. No, sir.
Q. 30. No accounts against any persons?
A. No, sir.

Q. 31. How recently before that date had you held any credits against any person?

A. I should think not for three or four years.

Q. 32. No mortgages on any real property?

A. No.

Q. 33. Nor on personal property?

A. No.

Q. 34. When did you move to Wickliffe?

A. In 1891.

Q. 35. Did you have any moneys on the day in April to which your attention has been called?

To which question plaintiff objected as not cross-examination, and informed the witness that he need not answer the question unless he chose to do so.

A. I had no money in savings banks, and I have none subject to my credit in national banks, if so, I made return of it for taxation in the account there. I could not tell without looking. I had no idea I had any.

Q. 36. You were in what business in April, 1897?

A. In several kinds of business. My principal business is as manager of estates, and also I was then and am still president of the Mercantile national bank. I was then and am still treasurer
344 of the Cleveland and Mahoning Valley Railroad Company. I was and am still president of the Dubuque, Iowa, Water Works Company, and a director and member of the executive committee, and a good many corporations.

Q. 37. In April, 1897, aside from being executor of Mr. Handy's will, of what other estates were you either executor or administrator?

Plaintiff objected to said question on the ground that in April, 1897, Mr. Truman P. Handy was living.

A. I was trustee under the will of Selah Chamberlain.

At this point Judge Boynton, counsel for plaintiff advised witness not to answer this line of questions because the matter is not germane to the present issues.

Q. 38. Do you decline to answer or do you not?

A. I defer entirely to my counsel in the matter.

Q. 39. Being thus governed, what do you say? Do you decline to answer or not?

A. I would just as soon answer as not, but under the advice of counsel I decline to answer.

Q. 40. Have you any other reason for declining to answer than the one you have given?

A. No.

Q. 41. When did Mr. Handy die?

A. March 25, 1898.

Q. 42. How soon after his death did you qualify as executor?

A. Probably three or four days afterward, or four or five days.

Q. 43. Did you have the management of Mr. Handy's affairs prior to his death?

A. I did not.

Q. 44. How do you know what credits he had or did not have in April, 1897, while he was still living?

A. Thinking you might wish to be informed on that subject I took occasion to make an examination of his books, and I also know in a general way because he often conferred with me in respect to his estate for years, telling me what things he had and what his views were concerning them, advising me probably ten years ago that I would, if living, have the administration of his estate.

Q. 45. Could you tell from examining his books in 1898, what credits he had in 1897?

A. I could, yes. The same credits that existed in 1897 exist still in 1898, every last one of them.

Q. 46. How do you know that?

A. From my examination.

Q. 47. How could you tell that notes that he may have held in 1897 were paid off between April 1897, and the day of his death 1898?

345 A. Finding those notes all in his possession upon his decease was pretty fair evidence. The notes were described upon his books, giving the dates. I have verified those dates.

Q. 48. Do you intend, then, to say that whatever of notes were indicated as being in his possession in April, 1897, his books examined in 1898 show they are still outstanding and unpaid?

A. I do.

Q. 49. You have said that whatever credits Mr. Handy had were practically worthless. Is that a correct statement of what you said?

A. It is.

Q. 50. Please state against whom and in what sums Mr. Handy held obligations in 1897, as you ascertained by looking at this books in 1898?

A. He had due from the South Market Company, a corporation existing in the city of Minneapolis, debts as follows:

A note dated Feb. 12, '94	$500 00
A note dated April 2, '94	2,078 29
A note May 28, '95	595 28
A note July 1, '94	10,966 12
A note November 15, '95	845 83
A note May 23, '96	1,101 97
Making a total of	$16,087 49

He had also in a note that was dated later than that time, but for moneys advanced prior to that time on one-half interest in a second mortgage of this same company in the hands of H. P. Crowell, Chicago, $15,000. His books show this, and I have had communication once or twice, with Mr. Crowell since his death and Mr. Crowell verifies that. He had also a note of the Gardner Kane Co., dated

December 11th, 1896, $5,492.14, aggregating $36,519.63. This is all that was turned over to the appraisers. In addition there are rents and little due bills amounting probably to $4,000 in all running back over 40 years. They are to various people of no earthly responsibility, some of them. He marked his packages all bad and most of them dead. I didn't think it was worth while to bring you a list of those things today.

Q. 51. What was the name of that corporation you first mentioned?

A. The South Market Company, Minneapolis.

Q. 52. Is that a company in which you had any stock?

A. No, sir.

346 Q. 53. Is that a company of whose assets in 1897 you have any personal knowledge?

A. Only knowledge as derived from the owners of it, Mr. Handy and Mr. Crowell.

Q. 54. Direct personal knowledge you have none?

A. Direct personal knowledge I have none.

Q. 55. Do you know whether it is still a going concern?

A. Oh, yes.

Q. 56. Doing business?

A. Yes, in the same sorry condition today that it was then, as I was then advised.

By Judge BOYNTON:

Q. 57. Is the paper worthless?

A. Yes, and I am afraid worse than worthless.

Q. 58. Does the statement you have just made include all the credits so far as you know, owned and held by Mr. Handy in April 1897?

A. It does.

Q. 59. Please repeat again what on that date, so far as your knowledge goes was his indebtedness?

A. He owed $86,000 exactly. Of course, there was interest on it.

Q. 60. How much stock did he have?

A. 400 shares.

Q. 61. In which bank were these shares?

A. In the Mercantile national.

Q. 62. You spoke of an inventory and appraisal made after Mr. Handy's death of his estate. Did I understand you correctly when I understood you to say that the appraisers found that the credits to which you have testified and which are contained in the inventory, were practically of no value?

A. You will find that in the probate office as I have stated.

Q. 63. When was this inventory filed, if you remember?

A. It was filed—the day I cannot tell you—30 or 40 days ago along early in July.

Q. 64. On that inventory did these 400 shares of stock appear?

A. They did not. 240 shares appeared.

Q. 65. State the reason for the disappearance of the other?

A. The capital stock was in 1897 a million dollars, but reduced on the first day of April 1898, to $600,000, and the 400 shares as you can see would be reduced to 240 shares.

347 Q. 66. Were these shares that were returned in the inventory, appraised also by the appraisers?

A. I beg pardon, it was the whole 400. It was made earlier than this—the appraisal was made—the estate was appraised as it appears at the time of Mr. Handy's death, and the 400 shares were in.

Q. 67. Mr. Handy died the 25th of March, 1898?

A. Yes, that's right.

Q. 68. How soon afterward was the appraisal made and the inventory returned?

A. About 30 days after that. The inventory was not returned so soon as made by quite a little time.

Q. 69. On that inventory there appears the valuation of these shares of stock?

A. Yes.

Q. 70. Do you know whether there was any considerable change of the values of that kind of stock between April, 1897, and the date in 1898 when the inventory was returned?

A. Do you mean in real value of the shares?

Q. 71. Yes.

A. There was none.

Q. 72. Was there other national bank stock in that inventory aside from this one bank?

A. There was not.

SAMUEL E. WILLIAMSON, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. Please state your name, age, and residence.

A. Samuel E. Williamson, 54, Cleveland, Ohio.

Q. 2. What if any stock did you own in the Mercantile National Bank of Cleveland on the day preceding the second Monday in April, 1897, and on the Wednesday next preceding the second Monday in May 1897?

A. There were 100 shares standing in my name, but only 50 were my own personal property. The others I have in trust for somebody else.

Q. 3. You owned 50 shares?

A. Yes, although there are 100 standing in my name.

Q. 4. How many in the Western Reserve national bank?

A. 100 shares.

Q. 5. And how many in the Commercial national bank?

A. 121 shares.

348 Q. 5. What if any legal claims and demands whether for money or other valuable things, or for labor or services due or to become due to you including deposits in banks or with

persons in or out of this State other than such as are money, did you own on that day?

A. Do you mean a statement, or simply the amount?

Q. 6. The amount first—I mean the amounts of other credits other than bank stock?

A. I think $8,000 would be all. This is in 1897 you are inquiring about.

Q. 7. What, if any, legal *bona fide* debts did you owe on that day, leaving out of the account all obligations to any mutual insurance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received or which you believed at the time of making such acknowledgment to be other than a safe consideration therefor, and all acknowledgments of indebtedness made for the purpose of diminishing the amount of your credits to be listed for taxation, and to whom did you owe them?

A. I owed as much as $60,000.

Q. 8. You may state to whom you owed most of it.

A. I owed the Society for Savings one debt of $18,000, another of $7,500, and I think another of $9,000. The Western Reserve Adelbert College I owed $15,000 and the Lakeside Hospital $5,000.

Q. 9. You may state if the affidavit which I now put into your hand under date of May 13, 1897, and which has already been introduced in evidence as Plaintiff's Exhibit Williamson, bears your signature?

A. Yes.

Q. 10. Did you file or cause to be filed with the auditor of Cuyahoga county, Ohio, this affidavit and demand which has already been offered in evidence as Plaintiff's Exhibit Williamson and which purports to be signed by you?

A. Yes, I caused one to be filed in case of each bank with the county auditor.

Q. 11. You may state whether the three I put into your hands are the ones?

A. Yes, the three you show me are the ones.

Cross-examination of SAMUEL E. WILLIAMSON.

By Mr. BENNETT:

Q. 12. At the time of the listing of your personal property for taxation inquired about in your examination-in-chief you
349 spoke of having 100 shares in your name of the Commercial national bank, and but 50 in your own out of the 100. For whom did you hold the other 50 shares as trustee?

A. My brother James D. Williamson.

Q. 13. Was that by any trust created by a court of record?

A. Not at all.

Q. 14. Was it by a private arrangement between you?

A. Simply a matter of convenience between us because I wanted to use it.

Q. 15. In what did the trust consist?

A. The stock I had subscribed for in my own name for myself and my two brothers when the bank was organized. My brothers paid two-thirds and I paid one-third, and J. D. and I bought out my other brother. So it always stood in my name.

Q. 16. In the report and list of stockholders of this bank you appear as the owner of the entire 100 shares, do you not?

A. I do.

Q. 17. Did you list the 50 shares as trustee under the statute, or did you list them individually as your property?

A. I didn't list them at all.

Q. 18. Did the cashier, so far as you are informed, list the 100 shares as your individual property, or list 50 shares of your individual property?

A. Only 50 shares of my individual property, because I claimed only 50 shares.

Q. 19. Where does your brother J. D. Williamson live?

A. On Cornell street, Cleveland.

Q. 20. What was the date that you spoke about having listed this property in your examination-in-chief?

A. April or May, 1897. That is, I didn't list it at all. I merely made the affidavit in reference to taxation.

Q. 21. And that affidavit is the one referred to by Judge Boynton and handed to you in your examination-in-chief?

A. Yes.

Q. 22. State what valuation you placed upon the 50 shares or upon any of the shares of stock in the Mercantile national bank in April 1897, or what valuation was placed upon that in the markets of Cleveland at that time?

To which question plaintiff objected as impertinent to the issues, and plaintiff's counsel advised witness not to answer the question.

350 A. I have no objections personally to answer. I did not place any valuation upon it as I remember now. My debts were so much in excess of all the credits and stocks I owned in national banks that it didn't make any difference to me what value the auditor of the board of equalization put upon it, because my debts were so much more. I think the stock itself was valued in the market somewhere in the neighborhood from 130 to 135. I know of no sales. Nothing farther than quotations.

Plaintiff objected to the last statement in the answer about quotations.

Q. 23. In your opinion then you would give that as the fair value of such stock in the month of April 1897?

Same objection by plaintiff.

A. No, I would not. I don't think it was worth any such amount from my knowledge of the matter since and what I knew at that time. I knew there were a great many assets that they were carrying, which, if they had been actually valued at what they were worth, would have reduced their assets; and in fact it is shown since

by the face that they have paid back at par $\frac{4}{10}$ of their capital stock, and the stock that is left is as high as the stock before they paid back the par 140 per cent.

Q. 24. Do you know what that stock is now quoted at in the markets of Cleveland?

To which question plaintiff objected as not germane to the inquiry, and counsel advised witness not to answer the question.

A. I decline to answer under the advice of counsel.

Q. 25. Was it not quoted May 3rd, 1897, as follows: Mercantile national bank 135, bid 135, asked 136?

Same objection, by plaintiff.

A. I don't know.

Q. 26. When you say Judge Williamson, that your debts were far in excess of your credits, do you place among your credits the bank stock in question?

A. Yes.

Q. 27. Then to determine whether your debts are in excess of your credits, what valuation did you place upon this particular part of your credits, namely your stock in the Mercantile national bank?

A. I didn't place any particular value on it. I knew whatever value anybody placed on it, I still owed more than all my credits, including the national bank stock.

Q. 28. Would you then in that estimate place the hundred shares of national bank stock, or rather the 50 shares, at 135?

A. If you placed it at 150, the conclusion is the same as far as I am concerned. If it was worth 200 I would still owe debts enough to cover it.

351 Q. 29. I don't care to place it at all. I want your valuation of it.

A. I didn't testify from value. I simply figured that if it was worth 150, I still owed enough to cover all my credits including national bank stock.

Q. 30. Did you figure in the 100 shares in the Reserve national bank as part of your credits?

A. Yes.

Q. 31. What was that stock worth in April 1897?

A. I don't know.

Q. 32. How do you know that your debts exceeded your credits so greatly?

A. I know it wasn't worth 150.

Q. 33. Was it worth 130?

A. No, I don't think it was.

Q. 34. Was it not in fact bid in Cleveland, Ohio, on May 3rd, 1897, 129 for that stock?

A. I don't know.

Q. 35. In estimating how you arrived at your excess of debts over credits, what valuation did you place upon the Western Reserve National Bank stock?

A. I didn't place any particular valuation on it.

Q. 36. Did you place any valuation on it?

A. No, not any valuation. I figured if it was worth 150 I still owed so much I had enough to cover all my credits in the national banks. It wasn't necessary to figure it out so fine.

Q. 37. Shall I place this stock as high as 150 in April 1897?

A. I can't imagine anything that would be farther from the truth than that would be.

Q. 38. I ask you to place a valuation on it at that time, either 150 or less?

A. I don't know enough to place a valuation on it.

Q. 39. What valuation did you place on the stock of the Commercial national bank in April 1897?

A. I treated that exactly as I did the other stocks.

Q. 40. Was it not worth in the market of Cleveland, or was there not asked for it, 125?

A. I should presume they would ask that for it.

Q. 41. Was there not bid for it on the third day of May 1897, 124?

A. I don't know what was bid for it any particular day. I could not say about that.

Q. 42. Now there were the 50 shares in the Mercantile national bank and 100 shares in the Western Reserve national bank, and 121 shares in the Commercial national bank, which all were used by you to augment your credits, were they not?

352 A. They were treated as part of my credits.

Q. 43. Can you state to the court what valuation you placed on that amount of bank stock?

A. I cannot say any more than I have said.

Q. 44. Can you state in the aggregate what valuation you placed upon it?

A. No, I can't state that, because I don't think I placed any particular valuation on it.

Q. 45. I don't mean your valuation in any return. I mean your valuation that you might have placed upon it in determining that your debts were in excess of your credits?

A. I didn't place any particular valuation upon it for that purpose, as I have said. I knew if it were fixed half again as much as its par value, I still owed so much of debts they were more than my credits.

Q. 46. What interest, if any, can you state, or what dividends, were paid on the Mercantile National Bank stock during 1897?

A. 6 per cent. on par.

Q. 47. What interest was paid or what dividends were paid on the stock of the Western Reserve national?

A. 6 per cent. on par.

Q. 48. What dividends were paid on the Commercial National stock?

A. 6 per cent. on par.

Q. 49. This refers to 1897?

A. Yes.

Q. 50. You have given among your other credits $8,000 in April, 1897. Will you state what these credits consisted of?

A. They did not exceed $8,000, as my recollection serves me now. I think I had a mortgage indebtedness of a little less than $3,000 and another one of $3,500, and perhaps $300 in the Society for Savings. I don't remember anything else now.

Q. 51. Did you say these were debts or credits?

A. Credits. That's what you asked me.

Q. 52. Yes, credits; and these were represented by mortgages, were they?

A. Yes, of course, it is a little difficult for me to remember.

Q. 53. What was the value of this $3,000 mortgage?

A. It's worth all it calls for.

Q. 54. Was it paid?

A. No.

Q. 55. Is it still a credit?

353 A. Yes.

Q. 56. Who is that against?

A. It's against a man named Reuben Straus.

Q. 57. Where does the real estate upon which it is a lien lie?

A. It lies down on Superior Street hill in this city.

Q. 58. The other mortgage you gave on $3,500?

A. Yes, I think that was outstanding at that time.

Q. 59. Whom was that against?

A. A man by the name of Bandlow.

Q. 60. Was it assigned to you, or were you in it as a mortgagee?

A. It was assigned to me.

Q. 61. Whom by?

A. Felix Nicola, I think.

Q. 62. That would make $6,500. Has that been paid, that $3,500?

A. Well I have taken a loan, if that makes payment.

Q. 63. When?

A. I think it was some time in 1897. That's the reason I put it in.

Q. 64. What other credits had you at that time?

A. I think I had about $300 in the society deposit, that's all I at the present time recollect. I have one or two others that are worthless.

Q. 65. Have you a register kept by you of your bills receivable covering the month of April, 1897?

A. Yes.

Q. 66. Will you produce it?

A. Why, yes, if you like. I haven't got it here.

Q. 67. Have you accounts, or did you have in April, 1897, for professional services or otherwise that were unpaid?

A. Well, I presume I did, but if they were unpaid, they were entirely unsettled. I don't keep books enough to know what they are.

Q. 68. I mean accounts that were unpaid, credits in your favor. Please give an estimate of those, if any existed in your favor in April, 1897?

A. Possibly $4,000 or $5,000.

Q. 69. You say you made an affidavit of the amount of your indebtedness in April, 1897, which was filed with the county auditor by the cashiers of these various banks?

A. No, I said I signed affidavits that were shown to me. But that's not all I owe. I owed even more than I have spoken of today.

Q. 70. I see that you have used in each of the three affi-
354 davits made—in the Mercantile national bank, the Western Reserve national bank and the Commercial national bank, the same amount of indebtedness of $40,000 to offset the value of your bank stock in the three banks referred to. State again, will you, to whom or to what corporations this indebtedness was owing at that time?

A. I owed $18,000 on one note to the Society for Savings.

Q. 71. Was that your paper or were you surety on the note?

A. It was my paper with my two brothers.

Q. 72. Were you the principal of that $18,000 note or merely surety?

A. The note was $30,000, but my indebtedness on it with them was $18,000—my part of it.

Q. 73. When was that given?

A. Years and years ago, ten years ago, I guess.

Q. 74. What was the original amount of it?

A. $30,000.

Q. 75. Was none of it paid during the ten years of its existence up to 1897?

A. No, it is not paid yet.

Q. 76. Did that represent money borrowed of the Society for Savings?

A. Yes.

Q. 77. What was that money invested in?

To which question plaintiff objected.

A. $18,000 was invested in building and loan with my brothers, and $12,000 of it was invested by one of my brothers in foundry property in Chicago. It was more convenient to lock the indebtedness in one note secured by one piece of property.

Q. 78. Was the $7,500 note—what does it represent? Borrowed money?

A. Yes.

Q. 79. What was the date of that?

A. I should think some time in 1895 or 1896.

Q. 80. What was that used for, Judge?

A. It was part of the purchase-money in some property next to my house on Euclid avenue that my neighbors and myself bought.

Q. 81. Does that remain unpaid?

A. I am sorry to say it does.

Q. 82. Was there any collateral deposited with that to secure the payment of the same?

A. It was secured by a mortgage on the property.

Q. 83. The $9,000 that you say you owed the Society for Savings, when was that given?

355 A. I am a little bit off. It was given at the same time—most of it. The note was given about the same time. The note was given at the same time.

Q. 84. In 1895 or 1896?

A. Yes, the same time that the $7,500 was.

Q. 85. What was that invested in?

A. In this same purchase of land on Euclid avenue that we bought to protect ourselves, which land we would be very glad to sell.

Q. 86. What does this loan of the Western Reserve Adelbert college represent?

A. It represents borrowed money.

Q. 87. It is evidenced by a promissory note?

A. Yes.

Q. 88. Whom is that note signed by?

A. Myself.

Q. 89. Individually.

A. Yes, $5,000 of it has been paid since, but the note is $15,000.

Q. 90. Since when?

A. Since May, 1897, I think.

Q. 91. Can you give the date of that loan?

A. I can't. It was several years ago.

Q. 92. This note to Lakeside hospital of $5,000, can you give the date?

A. That was four or five years ago.

Q. 93. Was it still unpaid in April, 1897?

A. Yes, it is unpaid yet.

Q. 94. Has any part of it been paid?

A. No, the debt is bigger now than it was then.

Q. 95. Was there any other indebtedness that you wished to add to this as part of your evidence, that was owing by you in April, 1897?

A. I don't remember now that there is any.

Q. 96. This 50 shares in the Mercantile national bank as trustee, I understand you returned that?

A. I only claim 50 of it. I left the other 50 for the bank to return, which they probably did.

Under date of August 30, 1898, Samuel E. Williamson testified further as follows:

I would like to correct a mistake I made in my testimony the other day. I don't know as it makes any difference in the

356 record, but I would rather be accurate. I stated, I think, that I owed a note of $9,000 to the Society for Savings, and one of $15,000 to Adelbert college. I find on examination of my books that I have made a change in that in March, 1897, so that on the first of April I had taken up the $9,000 note, which was in fact only $6,000 and made a note for $32,000 to the Society for Savings, and I paid out of it, I think, $5,000 on the Adelbert College note.

By Judge BOYNTON:

Q. That would leave $10,000 due the Adelbert college?
A. Yes, and the loan of $9,000 was only the loan of $6,100. My indebtedness at that time was one note of $30,000 to the Society for Savings.

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THOMAS H. WILSON, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. HORR:

Q. 1. Please state your name, age and place of residence?
A. Thomas H. Wilson, age 56, Cleveland.
Q. 2. You are the cashier of the First national bank?
A. Yes.
Q. 3. And you were in the year 1897?
A. Yes.
Q. 4. You may state whether you were a member of the committee appointed by the various national banks of the city of Cleveland to visit the auditor of State and the attorney general and the governor during the month of December last, after you had learned that the valuation of your shares had been increased by the State board of equalization?
A. I was not.
Q. 5. Were you present at a meeting of the committee composed of several of the cashiers of national banks in this city with the auditor of State and the attorney general during the month of December, 1897, at Columbus?
A. No.

By Judge BOYNTON: It appearing that the witness was not present at the meeting of the committee referred to in the above inquiry, his testimony in this case is entirely withdrawn by the plaintiff.

To which attempt to withdraw the testimony defendant objected.

357 Cross-examination of THOMAS H. WILSON.

By Mr. BENNETT:

Q. 6. I desire to inquire if you ever appeared before the board for the equalization of bank shares during the year 1897 on behalf of the First national bank, to seek to have the valuation placed upon said bank shares by that board reduced in value or otherwise equalized?
A. Yes.
Q. 7. When?
A. I can't recall the exact date. I suppose it is a matter of record somewhere.
Q. 8. Did you there on behalf of said First national bank make

any complaint and seek to have said board equalize the value of said shares?

A. I asked them to deduct off what they had put on, the entire amount.

Q. 9. How did you receive notice that they had put on any amount if at all?

A. Only through the county auditor. We had no notice till after it was done.

Q. 10. You appeared there on behalf of said bank after the addition was placed to your return, did you not, by the State board?

A. I don't know. It was pretty near the end of the tax-paying period. It must have been pretty close to the 15th of December.

Q. 11. It was after the action of the board in placing this addition to the values as fixed by the bank and returned to the county auditor?

A. Oh, sure.

Q. 12. And it was after you had received notice from the county auditor of the increase in that bank's valuation?

A. I should say so, most certainly.

Q. 13. Then what did you seek to have them do? State to the court just what took place.

A. I asked them to take off the entire increase of the bank. What further do you want as to what took place?

Q. 14. Did you there file any complaint with said board?

A. Not with them.

Q. 15. Did you introduce any testimony?

A. Well, I don't know whether you would call it testimony or not. I made a statement. I don't know whether they were sitting as a State board or not, they didn't say.

Q. 16. The State board were present?

358 A. There was the attorney general, and the auditor, and the governor.

Q. 17. After they failed, refused or neglected to do what you had asked them to do, what, if anything, further did you do with regard to their judgment in the matter?

A. We have done nothing since. I wrote to them declining to accept their reduction; that we would stand on our legal rights.

Q. 18. When you say "accept their reduction," to what do you refer?

A. They made a deduction on the strength of my statement.

Q. 19. Tell us how much of a deduction.

A. I cannot tell you now. I have no figures with me. I don't know whether I have any record of it or not.

Q. 20. Did they make a deduction upon any other bank than the First national?

A. That I could not tell you.

Q. 21. Did you keep a copy of your letter or notice to them? You say you wrote to them?

A. I ought to have a copy of it. I cannot say right here whether I have or not.

Q. 22. Then, immediately after that you began this action in which this testimony is being taken, did you not?

A. The action may have been begun before, I cannot say.

Q. 23. What was the date of your letter to the board?

A. I cannot tell you.

Q. 24. How long was it after you were there on the 15th and gave your statement?

A. You mean how soon did the board—if it was a board—take action?

Q. 25. How long after you were there and gave your statement to the board did you write them this letter, declining to accept their deduction?

A. Not till I had received word from them through the auditor of the county.

Q. 26. When was that?

A. I don't know. Some time had elapsed. They took plenty of time.

Q. 27. Was it a couple of weeks?

A. More than that.

Q. 28. Haven't you somewhere a letter from the auditor of this county notifying you of the action of that board?

A. We may have.

359 Q. 29. Can you definitely fix the date of your letter to said board, the date on which you gave them notice that you refused to accept their deduction?

A. As I have said, if I had a copy of my letter, that will fix it beyond all doubt.

Q. 30. Will you please look that up?

A. I hope to go away this afternoon. I should think it was between the 5th and 10th of January. It might be later. I think it was about the limit of the tax-paying period. We will say the 5th of January to be on safe ground.

Q. 31. Do you know whether the bank had paid its taxes before you sent that letter back, notifying the board for the equalization of bank values that you would not accept their deduction?

A. I should guess we hadn't paid. I would say it was a little before.

Q. 32. Taxes were not paid as a matter of fact till after this action was begun to have the collection of the increased amount enjoined, is not that the fact?

A. I don't remember now.

Redirect examination of THOMAS H. WILSON.

By Judge BOYNTON:

Q. 34. When did your bank, or yourself as cashier first obtain notice that the State board of equalization at Columbus had increased the valuation of your assessment fixed by the auditor?

A. I should say it was some place between the 8th and 15th of December.

Q. 35. You may state if you or any member of your bank to your knowledge had any notice of the days on which the board of equal-

ization for banks, met at Columbus, after the day fixed by the statute in June?

To which question defendant objected.

A. None whatever.

Q. 36. Did you, prior to the 7th day of December, 1897, have any notice of any meeting of the board of equalization at Columbus concerning any action to be taken by them in relation to your bank?

To which question defendant objected for the reason that the witness appeared there without notice.

A. None whatever.

Q. 37. Did you have any conversation with the members of the board when you went there in December, after you had learned of the increase of the valuation of your bank property—with the
360 members of the board as a board of equalization—or as to whether they had previously adjourned *sine die?*

To which question defendant objected.

A. I did not ask them the question as to whether they were sitting as a board or not. That subject was not canvassed.

Q. 38. You may state if you made a statement to the auditor, to the attorney general and the governor, in relation to the report made by you to the Comptroller of the Currency for 1897, and the report made by you to the auditor of Cuyahoga county that year. Or, if any inquiries were made by any member of the board?

A. Yes, they inquired of me in regard to that.

Q. 39. Did you make a statement concerning the report made by you to the Comptroller of the Currency?

A. They had a copy of the report to the Comptroller of the Currency there.

Q. 40. What inquiry, if any, did they make of you relative to the difference in the valuation appearing in the report to the Comptroller of the Currency and that made to the auditor of Cuyahoga county for taxation?

A. I think the attorney general asked me to explain why our surplus should be so much less in one than the other.

Q. 41. What was your reply?

A. My reply was that we carried on our books $80,000 real estate which had an assessed valuation of $35,300. I am stating these things from memory, I may be wide as to a dollar or two—and that we had, perhaps, $75,000 of paper, bills receivable, which our board would sell to any member of that board for $25,000. These may not be the exact figures, but it will illustrate.

Q. 42. What did you say to them as to these two items, the real-estate item at $80,000 and these doubtful bills receivable at $75,000, having gone into the report to the Comptroller of the Currency at these respective figures?

A. I don't know that I said anything particular.

Q. 43. You may state whether or not they did go into the report to the Comptroller of the Currency at these figures?

A. Yes. That's the statement to the comptroller.

Q. 44. What did your real estate go into the duplicate at?

To which question defendant objected.

A. I think $33,300.

Q. 45. And what did you do in reference to your statement to the auditor about your $75,000 bills receivable that you said you would sell for $25,000?

361 A. Scaled them down to that figure.

Q. 46. You may state whether or not that explains the difference between your report to the auditor of Cuyahoga county and your report to the Comptroller of the Currency.

A. That is one of the two large items in the deduction. I also deducted the unearned interest of about two-thirds of our bill.

Q. 47. You mean in your report to the auditor?

A. Yes.

Q. 48. How did that appear in the comptroller's report?

A. It goes in at face.

Q. 49. And the unearned interest, the bank, of course, did not enter at that time?

A. No.

Q. 50. You may state whether you were notified by any member of the board that in consequence of your statement explaining the difference between the two reports they would make a deduction of the increase previously made to the valuation of your bank shares.

To which question defendant objected.

A. The State auditor, I think, wrote to the county auditor that the deductions for poor paper were allowed. The deductions which I claimed for the difference in the valuation of the real estate was not allowed; nor do I think they allowed us the deduction claimed for unearned interest.

Recross-examination of THOMAS H. WILSON.

By Mr. BENNETT:

Q. 51. Can you now give from memory the amount of your return in the year 1897 for said bank to the county auditor?

A. I think we returned for taxation a little less than $510,000; but I may be in error.

Q. 52. Can you give from memory the total reported to the Comptroller of the Currency the same month?

A. I think that was less than $610,000 of capital and surplus. I did not return anything for taxation to the Comptroller of the Currency.

Q. 53. Is not the amount reported to the Comptroller of the Currency by the First national bank, as required by the form furnished by the Comptroller of the Currency, $608,400?

A. Was that the amount?

Q. 54. I think so.

A. I thought it was a little less than $610,000. I can only give you approximate figures.

362 Q. 55. Is the real estate included in that valuation in the report to the Comptroller of the Currency?

A. It is returned there at $80,000.

Q. 56. Your capital stock at that time paid in was $500,000, was it not?

A. Yes.

Q. 57. Your surplus fund was $100,000, was it not?

A. Yes.

Q. 58. Your undivided profits, less expenses and taxes paid was $8,412, was it not?

A. Yes. I am assuming that you are reading from the report.

Q. 59. Now, for the purposes of taxation, did you deduct from that the value of the real estate?

A. I returned the real estate at its assessed value, just what the State and county say it is worth.

Q. 60. And you say that amount, with the amount of your bad paper and unearned interest, accounted for the difference between the report made to the Comptroller of the Currency and the return made to the county auditor?

A. Yes.

Q. 61. The board for the equalization of bank values, at the time that you were present, had before them the report that you had also made to the Comptroller of the Currency?

A. Yes.

Q. 62. And that report made to the Comptroller of the Currency was affixed to your return for taxation, and sent to the county auditor?

A. I could not say as to that.

Q. 63. Did not the form on which you made out the report of the First national bank in the year 1897, require that you append to that your last report made prior to that, to the Comptroller of the Currency?

A. I am not sure whether it does or not. It will appear on the form if so required.

Q. 64. And if it was required, you complied with that and appended to your return a copy of the statement which you had forwarded to the Comptroller of the Currency?

A. I cannot say whether I did or not, but it was pinned to our return down there.

Q. 65. Was it not a practice complied with by yourself of cutting out a printed report from the paper, a printed copy of your report to the Comptroller of the Currency, and just attaching that to your return for taxation?

A. I don't think I ever did it. I cannot remember that I
363 ever did. I don't believe I ever did. I believe there was a copy down at Columbus that somebody else pinned on.

Q. 66. At this time that the conversation occurred between you and the attorney general relative to the difference between the re-

port to the Comptroller of the Currency and your report for taxation, state whether or not that conversation and that appearance by yourself was after you had received notice of the board's action through the auditor of this county.

A. I should say it must have been.

Q. 67. I will ask you the question as to the true value in money of the stock of the First national bank at any time between the day preceding the second Monday of April and the second Monday of May, 1897?

To which question plaintiff objected as not proper cross-examination.

A. What do you mean by "true value?"

Q. 68. I submit to you.

A. Do you mean the selling value? I would say it was worth par, from par to 105.

Q. 69. Was there at that time any usual selling price for said stock?

A. We have had very few transfers of our stock in the last two or three years.

Q. 70. Was it because nobody wanted it, or because it was so good that nobody wanted to part with it?

A. I infer nobody wants it.

Q. 71. If there was no usual selling price, what amount, in your best judgment, could have been obtained therefor in money?

To which question plaintiff objected.

A. I think it would have sold for 115 or 120.

Q. 72. As a matter of fact, do you not know that on the third day of May, 1897, First National Bank stock in this market was bid 125 and asked 127?

A. No.

Redirect examination of THOMAS H. WILSON.

By Mr. BOYNTON:

Q. 73. What dividends has your bank declared during the last ten years?

A. We have passed two or three dividends, and made dividends at 4 per cent. yearly, and at 6 per cent.

Q. 74. How many years at 4, and what year?

A. I think perhaps 1889 and 1890.

Q. 75. Have you paid more than 6 per cent. any year?

A. Never since my connection with the bank.

Q. 76. How long have you been connected with it?

A. Since 1888.

364 Q. 77. Sometimes 4 per cent. yearly, and sometimes 6?

A. Yes, and sometimes none at all.

Q. 78. Is it you is it (*sic*) not true that banking during the last two or three years has not paid as well as in former time?

To which question defendant objected.

A. It has been very hard to earn a dividend for the last 5 years. I am speaking now of ourselves.

Q. 79. Does that circumstance affect the true value in money of bank stock?

A. It does to my mind.

Q. 80. You may state whether or not, in your judgment, 115 or 120 a share, which you say possibly might have been realized for it, represents the actual value of the shares of stock as a moneyed investment.

A. It is beyond the actual value. The bank could not liquidate at that. They could not pay 120.

Q. 81. What percentage of the par value, in your judgment, would the bank assets sell for, or would it have sold for in 1897, if you had offered them all in the market for sale, good, bad and indifferent?

To which question defendant objected.

A. I did not make any claim for deduction on general depreciation, but I believe that any bank in selling out could afford to discount on what are called good assets one or two per cent. anyway, aside from the unearned interest.

Q. 82. In selling out the whole concern?

Recross-examination of THOMAS H. WILSON.

By Mr. BENNETT:

Q. 83. I would like to know the amount that the board said they would reduce your tax.

A. They allowed our bad paper, and I think that is all. They rejected the claim for unearned interest and the difference in the valuation of the real estate.

Q. 84. And that proposition you rejected?

A. Yes, we declined to accept it.

Mercantile Bank.

J. J. SULLIVAN, a witness produced in behalf of said complainants, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. BOYNTON:

Q. 1. Please state your name, age and place of residence.

365 A. J. J. Sullivan; age, 53; Cleveland.

Q. 2. You may state whether you were appointed by the clearing-house at Cleveland as a member of the committee to visit the governor, the auditor of State and the attorney general in December, 1897, with reference to the increase of valuation made by the State board of equalization of bank shares.

A. Yes.

Q. 3. You may state when, as cashier or otherwise, of the Central national bank, you first learned of the increase made by the State

board of equalization of the valuation fixed by the auditor to the bank shares.

A. That information was brought to me by a letter received from the county auditor.

Q. 4. Do you remember about the date?

A. About the 7th of December.

Q. 5. What information had you before that time of any action of the board of equalization?

A. Absolutely no information whatever.

Q. 6. What information had you of any meeting of the board of equalization prior to that?

A. No information whatever.

Q. 7. What information had you that any complaints had been made by the board of equalization for bank shares at Columbus that the valuation fixed by the auditor was not right?

A. I had no information at all on that point.

Q. 8. I understand you were on the committee that went to Columbus?

A. Yes.

Q. 9. Do you remember about the time you went?

A. I think about the 28th or 29th of September. I have a telegram from the governor fixing the date about the 22nd of September, but some members of the board who were away on leave of absence had not returned, and the meeting was postponed till a later date.

Q. 10. At that later date you gentlemen went?

A. Yes.

Q. 11. Whom did you meet?

A. We met the governor and the attorney general and the auditor of State.

Q. 12. What did those gentlemen or either of them say to you about hearing your complaints of the increase of valuation, as a board of equalization?

A. They said that the board of equalization had adjourned finally and we could have no hearing.

366 Q. 13. What conversation did you or any member of your committee have with the board, or any member of the board, in relation to the difference in the valuation of bank property as given by the report to the Comptroller of the Currency, and the statement made to the auditor? Give us the history of what transpired there on that subject, what was said by you and what was said by them.

A. The conversation was an informal one. I explained to them for our own bank the cause of the difference between our statement to the Comptroller of the Currency and that made to the county auditor.

Q. 14. Give us what you said in substance.

A. I said we deducted from our notes and bills 3 per cent. for bad and doubtful notes.

Q. 15. In your statement to whom?

A. To the county auditor——

Q. 16. What did you say to them about the report to the Comptroller of the Currency?

A. That that had in it a transcript of our books, literally embodying bad and good debts.

Q. 17. Now, I wish you would state here what you have stated before in reference to what is placed before you when you make your return to the Comptroller of the Currency. First let me ask you whether, before you went into the banking business, you were an examiner of national banks?

A. Yes.

Q. 18. How long?

A. Two and a half years.

Q. 19. Under whose administration?

A. Under the Cleveland and under the Harrison administration.

Q. 20. And are familiar with the mode of bank examining?

A. Yes.

Q. 21. What did you say went into the report to the Comptroller of the Currency?

A. The report to the Comptroller of the Currency is made on blank forms furnished by the comptroller's office, and these forms require a detailed statement of all the assets of the bank as they appear on the books of the bank on a day three or four days prior to the notification from the Comptroller of the Currency that the statement is required. Along with the general statement, bank managers making up their statement are required to give in detail, along with the notes and bills of the bank, the bonds on hand, how the bank got them, whether by purchase or taken on a debt, as also stocks of other banks or other corporations which they might have in their possession.

367 Q. 22. You may state whether or not the report made by your bank in the year 1897 embraced these requirements.

A. Yes.

Q. 23. And whether or not the exhibits there made embraced your good and bad debts together?

A. Yes.

Q. 24. Have you a blank that you could furnish for use, that contains the report made to the Comptroller of the Currency?

A. For use of what?

Q. 25. For use of this deposition?

A. I have retained a copy.

Q. 26. Will you send us one?

A. Yes.

Q. 27. Can you give us a copy of the May report of 1897?

A. I think I can.

Q. 28. I understand you, then, to say that the difference between the report made to the auditor for taxation and to the Comptroller of the Currency is the fact that one includes all debts and the other excludes them?

A. That accounts wholly for the difference, the bad or doubtful debts.

Q. 29. You may state whether or not these facts claimed by you relative to this difference were laid before the governor and the auditor and the attorney general in the interview of the committee with them in the latter part of December, 1897?

A. Yes, and the same statements made to the governor and attorney general and auditor of State in the latter part of December, 1897, were made in substance to the State board of equalization in about June, 1896, and they were accepted by the State board of equalization at that time as being true, and the State board accepted the statement of the banks as made to the county auditor literally in 1896.

Defendant objected to this last answer.

Q. 30. Your committee represented all the national banks of the city?

A. Yes.

Q. 31. Were these statements made by you to the members of the board of equalization in behalf of all the banks?

A. Yes.

Cross-examination of J. J. SULLIVAN.

By Mr. BENNETT:

368 Q. 32. Referring first to the reports made to the Comptroller of the Currency inquired of by Judge Boynton, permit me to inquire of the reports required of national banks by the Comptroller of the Currency are not required to be published in the form as made to the Comptroller of the Currency, so as to show the resources and liabilities of the various national banks at the time they are made?

To which question plaintiff objected because it is an inquiry concerning a matter of law.

A. There are two forms that are sent to national banks when a call for a statement of the bank's condition is made; one form is in brief providing for publication. That statement that is published is required to be certified to by the publisher as having appeared in his paper under such a date. That certificate of the publisher, with the statement as printed, is attached to the statement furnished by the bank to the publisher. Along with that there is another statement containing identically what appears in the published statement, and much more. This is the form that we retain. Each of these forms are sent in duplicate. One form is filled out by the bank for publication and the other is filled out to be returned to the comptroller along with the published statement. In the form which accompanies the printed form there are provisions for going into detail at great length. That shows the bad and doubtful debts, the list of directors and officers, and gives us all the minutiæ pertaining to the bank's condition to a much greater degree than appears in the published statement. There is where you gentlemen made the mistake, in being governed wholly by this matter which appears in the paper or in this book—this Financial Review.

Q. 33. You have given the report which is not published as required by the Comptroller of the Currency, and that which is published. These reports are made by you and by all cashiers on forms provided by the Comptroller of the Currency?

A. Yes, that's what I said.

Q. 34. And verified by the oath or affirmation of the cashier of the bank?

A. Yes, and attested by three directors of the bank.

Q. 35. And these reports are made at least five times a year?

A. Yes.

Q. 36. The report that is published truly exhibits the resources and liabilities of the association at the close of business on any passed day specified by the comptroller, does it not?

369 A. As they appear on the books of the bank.

Q. 37. And they are supposed to be and are actual and exact transcript of the books of the bank?

A. They are supposed to be.

Q. 38. With regard to the matter that is not published, that pertains to the indebtedness of the individual directors and their indebtedness to the bank and other secret matters which the governor does not require to be published along with the other report, is that not true?

A. Yes, that's right.

Q. 39. But the report as published is meant to exhibit the resources of the association on any given day?

A. As they appear on the books of the company.

Q. 40. These reports thus exhibiting the resources and liabilities of the association must be printed in some newspaper in the locality, published in the locality or the place where said association is established?

A. Yes.

Q. 41. And it was such a report that you have had in your hands and to which you have referred during this testimony?

A. What do you mean by saying I had it in my hands?

Q. 42. That Financial Review (referring to "Akins' Exhibit B" attached to the deposition of Auditor Akins).

A. I don't think you make that very clear. This Financial Review is simply printed by a young man here for distribution to make money out of.

Q. 43. That publication of the Financial Review is a transcript of the reports made to the Comptroller of the Currency at the various times in which they are said to have been made, namely in May, 1897.

A. As taken from the newspapers of the city. They do not get this from the bank. They get it from the newspapers.

Q. 44. It was one of these published reports to the Comptroller of the Currency that the board for the equalization of bank values, consisting of the governor, the auditor of State and the attorney general had before them at the time you were present with the balance of the committee, was it not?

A. I could not say as to that.

Q. 45. Did you examine the report to the Comptroller of the Currency that they then had before them?

A. As a matter of fact this is not the report to the Comptroller of the Currency. This is simply a transcript from the newspapers published in the towns—this Financial Review.

370 Q. 46. You have heretofore stated in your examination-in-chief that the board of equalization had before them a copy of the report of your bank and the other banks as made to the Comptroller of the Currency, and concerning which they asked you to make some explanation with regard to the difference between said report and the return made for taxation by each of the banks, did you not?

A. As a matter of fact we were not informed that we had met the board of equalization at all in December last. When our committee appeared before the governor, the auditor of State and the attorney general in December last, we appeared there not through an invitation from the gentlemen, but as a result of an arrangement made by me with the governor to have a meeting with the State board of equalization. We were not asked to explain the difference between our reports, but we did explain at length. After the explanation we were given to understand that the State board of equalization had adjourned some months previous, and that our only recourse was before a board of revision, as they called it, or abatement.

Q. 47. Did the board or the three gentlemen referred to request you to make an explanation of why your returned for taxation differed from your report to the Comptroller of the Currency?

A. My recollection is we were not requested to do so, but we were simply permitted through courtesy to make an explanation.

Q. 48. I will ask you whether you did make an explanation?

A. Yes.

Q. 49. When you made that explanation, did you have before you and did those gentlemen have present with them the report of the Comptroller of the Currency purporting to have been made by yourself as cashier?

A. My recollection is that during our conversation a Mr. Taylor, a clerk in the auditor's office, brought to the office a copy of this Financial Review, and submitted it to the governor, and as each of us talked about our respective banks, the governor turned to the statement of our respective banks as they appear in this Financial Review and compared this statement with the statement which we had made to the county auditor, and then I explained the causes of the difference in the figures.

Q. 50. And this was at the time you and the balance of the committee were before the board or the three gentlem-n, representing the national banks of Cleveland?

A. We were given to understand that it was not a board. It was at that time.

371 Q. 51. I characterize them as a unit instead of giving the three names of the gentlemen. You have said that you received a telegram from the governor of Ohio as to when you could be heard with regard to your bank values, have you not?

A. Yes.

Q. 52. Have you a copy of that telegram?

A. I have the telegram, but it is at my home.

Q. 53. Without requiring you, unless counsel for plaintiff objects, I would ask you to state the substance of the telegram?

A. It was to the effect that Mr. Guilbert and Mr. Monnett were absent from the city on their vacation, and would not return until the 22nd of December, and that upon their return he would notify me and would arrange for a meeting of our committee. That was the substance of it.

Q. 54. And when they did return, did he not send you a telegram on December 22nd, saying that the board would hear you?

A. I got a telegram from him on the 28th of December, saying that they would hear us, or that he had arranged for a meeting of our committee *on* 2 o'clock on the 29th.

Q. 55. I will ask you if this is not the fact, that you stated in your examination-in-chief that you had a telegram dated December 22nd, 1897, saying that the board would hear you, and that on December 27th or 28th you went to Columbus to see them. Is that not the fact?

A. The date of the first telegram from the governor—I have the telegram at my home.

Q. 56. If I misunderstood you before, we will have it corrected. You said in that connection something about the committee were not ready to go at that time, and you deferred till later?

A. No, you are mistaken in that, I did not say that because that is not correct. Will you permit me to clear the matter up for you?

Q. 57. Yes, that is what we want.

A. On the 7th of December, 1897, I received a letter from the county auditor stating that the board of equalization had increased the valuation of our bank something over $100,000. The other national banks in the city received similar notices. The result was we had a meeting of the clearance house for conference as to what to do. That meeting, I think, was about the 10th or 12th of December. At that meeting a committee of five was appointed to go to Columbus to confer with the State board of equalization.

372 The committee was composed of Joseph Colwell, F. E. Rittman, E. H. Bourne, M. G. Warner and myself. I was requested to arrange with the governor for the meeting. I wired the governor immediately after the adjournment of our clearing-house meeting, and it was along about the 12th of the month as I have said, asking for an appointment with the State board of equalization. He answered that Mr. Monnett and Mr. Guilbert were absent on their vacation and would not return to the city of Columbus until about the 22nd of December, when he would arrange for a meeting with our committee. On the 28th of December I got a telegram from the governor saying that the gentlemen comprising the board with himself who were absent, had returned, and that they would meet our committee at 2 o'clock on Wednesday, December 29th. We went the next day, wiring the governor beforehand, saying we would be there. This is a copy of my telegram.

Q. 58. What is the date of it?
A. December 28th.

By Judge BOYNTON:

Q. 59. Read it.
A. Witness reads: "Governor Asa S. Bushnell, Columbus, Ohio: Our committee will meet State board of equalization tomorrow, Wednesday, at 2.30 p. m." He said 2 o'clock, but as our train would not reach there until 2.30 I took the liberty to make the date a half hour later.
Q. 60. Is that the extent of the explanation you desire to make?
A. That covers it.
Q. 61. Governor Asa S. Bushnell was the president of the board for the equalization of bank values?
A. Yes, that's why we addressed him.
Q. 62. When you met there at that time did you file any complaint with said board?
A. Any written complaint, do you mean? No.
Q. 63. This was all prior to the time that the bank had paid their tax, was it not, up to December 28th?
A. Yes. We have been permitted to pay our tax a month later. Yes, it was prior to the time of the payment of our tax.
Q. 64. After the members of said board suggested to you that you could have any inequalities corrected—if they so did suggest—before them as a board of revision, did you submit any evidence before them as a board of revision?
A. No, sir.
Q. 65. Was there any evidence submitted at any other time before them, than what you have given?
373 A. Do you mean pertaining to this particular meeting?
Q. 66. Either before or after December 28th.
A. No, not in regard to the tax of 1897.
Q. 67. You had received word from the county auditor of the action of the State board for the equalization of bank values on December 7th, 1897, had you not?
A. That's my recollection.
Q. 68. And that valuation so placed upon the shares of said banks by said board of equalization had not, at the time of the notice to you, been placed upon the duplicate of the county against you, had it?
A. I have no information that would enable me to answer that question definitely.
Q. 69. While you were before said board with the other members of the committee, as a committee representing the various national banks of Cleveland, did you not state to said board that you made a practice of making a horizontal reduction of 5 per cent. for the bad paper held by each of the banks?
A. I didn't make that statement. Some member of the committee might have made that statement. I don't remember whether they did or not, I didn't.
Q. 70. Did you not then say in the presence of said board that for

poor paper, or that what you considered poor paper and real estate they took a certain amount, and that amount in some instances as stated by you was estimated at 5 per cent. of the entire capital stock?

A. Some member of the committee might have made that statement, but I did not. We have no real estate in our bank. Different banks carry different lines of assets.

Q. 71. Did the board not state to you at that time and to your committee that the property on the tax duplicate in Cuyahoga county was placed there at a much less amount than in any other county in the State?

A. I don't remember that statement.

Q. 72. Did they not give that as one of the reasons why they made the raise?

A. I could not say. There was a great deal of informal talk. I could not undertake to repeat all that was said.

Q. 73. You are acquainted with the duties of bank examiners?

A. Somewhat.

Q. —. You have testified to being a bank examiner in the past years?

A. Yes.

374 Q. 75. And you have been asked concerning their practices in some things, have you not?

A. How do you mean?

Q. 76. Concerning their practices or rules in examining resources and liabilities of banks. I mean you have testified here regarding that, have you not?

A. I don't think I understand how you mean the question.

Q. 77. You were interrogated about examiners' records?

A. No, the examiner's report is a different thing from a bank report. I will give any information you want.

Q. 78. I want to ask you what is the practice with bank examiners allowing national banks to carry bad papers on their books?

A. The practice is that bank examiners, when the fact became known to them that a bank has bad assets on its books, they recommend that the bank charge them off.

Q. 79. How long do they let you carry them?

A. That depends wholly upon the nature of the case.

Q. 80. It depends on how bad the paper is, does it not?

A. Yes; for instance if you have a note in suit and there is a probability of winning the suit, though the case is continued for many years, you are permitted to carry that as an asset until the court rules that it is worthless.

Q. 81. So that when a bank examiner passes paper and permits the bank to list that as among the resources of the bank, it is supposed in banking practice to be good paper, is it not?

A. The decision of the bank examiner does not always control. The bank manager is supposed to know more about the assets of his bank than the examiner knows about it. A literal construction of the language of your question would mean that the examiner has to pass upon the paper. That is not true. All the paper is listed be-

fore the examiner comes, and the examiner simply passes upon the assets of the bank as they appear on the books.

Q. 82. You say that in the report made by him upon information received from the association's officers, that he does not report the amount of good paper, and the amount of bad paper of such association?

A. For the benefit of the record I would suggest that you put in there "received information from the officers of the association and the books of the bank." The reading of your question would make it that the examiner simply gets information from the officers. That would be a reflection upon the national banking system.

375 Q. 83. I will repeat my question as modified. You say that in the report made by him upon information received from the association's officers and the books of the bank, that he does not report the amount of good paper and the amount of bad paper of such association?

A. It is his duty to classify the assets of the bank to the best of his knowledge, stating in his report how much of the loans are bad, and how much are overdue or in suspense.

Q. 84. From whom does he receive this information as to whether loans are bad or good, or whether they are held in suspense?

A. From the books of the company and the officers of the bank.

Q. 85. And he is required to examine any of the officers and agents of the banks on these questions?

A. Yes.

Q. 86. Then when he finds out from such sources the amount of bad paper if any which any association holds, what is he required to do with regard to that bad paper?

To which question plaintiff objected on the ground that it is a matter of law.

A. Make the entries on his report to the Comptroller of the Currency in regard to the information which he has obtained.

Q. 87. And what, if anything, does he direct the association to do with regard to that bad paper?

To which question plaintiff objected on the ground that it is irrelevant.

A. He may recommend that it be charged off. His particular duty is to report the findings to the Comptroller of the Currency with such recommendations as may be necessary, and let the Comptroller of the Currency take such action as he may deem proper. The bank examiner is the comptroller's agent.

Q. 88. Now state, Mr. Sullivan, when the Central national bank was examined by the bank examiner last prior to the month of May, 1897?

A. I think January would be the date of the examination preceding May, 1897.

Q. 89. How much, if any, bad paper did the Central national

bank, or you as one of its officers, disclose to the bank examiner as being bad paper, in amount?

To which question plaintiff objected as irrelevant.

A. I don't recollect the amount.

Q. 90. Did you inform him that any portion of the bank's paper was bad paper or uncollectible paper?

376 Same objection by plaintiff.

A. Whatever my opinion of the paper was at the time of the examination, it was my duty to so inform the examiner, and I think I did.

Q. 91. And whatever amount you informed him was bad paper will be disclosed by his report to the Comptroller of the Currency?

A. I suppose so.

Q. 92. Is it his duty to so report?

Same objection by plaintiff.

A. I had no means of knowing that. The examiner never shows his report that he is examining. He retains a copy which is his private matter.

Q. 93. You have stated, have you not, that for the purpose of the return for taxation you deducted 3 per cent. of your capital stock to cover bad paper?

A. No, I did not. You are reasoning from the wrong premises. You use the words "capital stock," and I said 3 per cent. of our notes, bills receivable.

Q. 94. What would 3 per cent. of the bills receivable at the time that that claim was made amount to?

To which question plaintiff objected as irrelevant.

A. Something like $60,000 or $70,000.

Q. 95. Was there any request or direction given to your bank by the Comptroller of the Currency to charge off that amount of paper or any amount of paper as bad paper, during the year 1897?

A. I am not sure whether we received a communication of that kind from the comptroller or not. We did charge off paper, nevertheless.

Q. 91. How much? Can you now state?

A. I could not recollect. No bank man could carry all these figures in his mind. Our books show all these things. It is enough to deal with this business even one day at a time.

Redirect examination of J. J. SULLIVAN.

By Judge BOYNTON:

Q. 97. Did you learn when at Columbus that any complaint had been made to the board of equalization of the valuation fixed on the bank shares of Cleveland by the county auditor? Did any of them state that any complaint was made by anybody? Or did they of their own motion increase the valuation?

A. My recollection is that the statement was made that our county auditor recommended the taxation of bank shares in Cleveland on the figures returned by the respective banks.

377 Q. 98. Was there anything said about any complaints having been made to them by anybody that these figures were not proper and right?

A. Nothing said as to any complaints having been made against the figures that were returned?

Recross-examination of J. J. SULLIVAN.

By Mr. BENNETT:

Q. 99. Didn't you state that you heard right there in Columbus that complaint had been made that Cuyahoga county was one of the lowest counties in the State, and that the banks of Hamilton county had complained against it being so low?

A. I did not state that.

AUGUST 25, 1898—2 p. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Hon. W. W. Boynton, counsel. Horr & Uhl, by Mr. Horr, for complainants. S. M. Bennett and P. H. Kaiser, for respondent.

W. G. MATHER, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. HORR:

Q. 1. Please state your name, age and place of residence.

A. W. G. Mather; age, 40; 383 Euclid avenue, Cleveland, Ohio.

Q. 2. What, if any, stock did you own in the Mercantile National Bank of Cleveland, Ohio, on the day preceding the second Monday in April, 1897, and on the Wednesday next preceding the second Monday in May, 1897?

A. 70 shares.

Q. 3. What, if any, legal claims and demands, whether for money or other valuable things, or for labor or services due or to become due to you, including deposits in banks or with persons in or out of this State other than such as are money, did you own on that day?

A. Somewhere between $5,000 and $6,000.

Q. 4. What, if any, legal *bona fide* debts did you owe on that day, leaving out of account all obligations to any mutual insur-

378 ance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received or which you believed at the time of making such acknowledgment to be other than a safe consideration therefor, and all acknowledgments of indebtedness made for the purpose of diminishing the

amount of your credits to be listed for taxation, and to whom did you owe them?

A. $25,000 to the Citizens' Savings and Loan Association of this city.

Q. 5. Did you file or cause to be filed with the auditor of Cuyahoga county, Ohio, this affidavit and demand which has already been offered in evidence as "Plaintiff's Exhibit W. G. Mather" in the Mercantile National Bank case and which purports to be signed by you?

A. Yes.

Cross-examination of W. G. MATHER.

By Mr. BENNETT:

Q. 6. In your affidavit made on the 21st day of May, 1897, you aver that the par value of the Mercantile national bank owned by you is $100 per share. What was the true value in money at that time on that day of that stock?

A. I don't know.

Q. 7. Did you inquire?

A. No, sir.

Q. 8. Was it not on that date in the city of Cleveland worth 135?

A. I cannot tell you, I don't know. I don't remember.

Q. 9. Was there a selling price for it in the city of Cleveland?

A. I presume so.

Q. 10. What was that price?

A. I don't remember.

Q. 11. If you didn't know the selling price, what amount could be obtained therefor per share in money?

A. I don't know.

Q. 12. Do you deny that that stock was worth 135 on that day?

A. Do you mean that it could have been sold at 135?

Q. 13. That it was worth that?

A. Yes, I deny it.

Q. 14. Do you deny that that was at that time its true value in money?

A. I should be very doubtful of that. I should say no.

Q. 15. You are equally certain that it was worth more than par?

379 A. I am not certain of that, no.

Q. 16. As a test you would not have taken par for it on that day, would you?

A. Probably not.

Q. 17. What do your additional credits of $6,000 consist of, in addition to your bank stock?

A. I don't remember them exactly. I had one or two small bills receivable and a small amount of cash in the bank. I feel perfectly safe in saying that they did not aggregate in value over $6,000.

Q. 18. Is this indebtedness to the Citizens' Savings and Loan Association your individual indebtedness, or is some person upon that paper with you?

A. It is my individual indebtedness.

Q. 19. There are no other names upon the note except your own?

A. No.

Q. 20. Was that indebtedness or any portion of it created for the purpose of purchasing bank stock which has been referred to?

A. No.

AUGUST 26TH, 1898—9 a. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Hon. W. W. Boynton, counsel. Horr & Uhl, by Mr. Horr, for complainant. S. M. Bennett and F. L. Taft, for respondent.

JAMES BARNETT, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. BO-NTON:

Q. 1. Please state your name, age and place of residence.

A. James Barnett; age, 77; residence, Cleveland, 697 Euclid avenue.

Q. 2. General, will you state what stock, what, if any, shares of stock you owned in the Mercantile Bank of Cleveland, Ohio, on the day preceding the second Monday in April, 1897, and on the Wednesday next preceding the second Monday in May, 1897?

A. I owned 400 shares.

Q. 3. What, if any, legal claims and demands, whether for
380 money or other valuable things, or for labor or services due or to become due to you, including deposits in banks or with persons in or out of this State other than such as are money, did you own on that day?

A. There was due me $59,000.

Q. 4. And you may state by whom.

A. The George Worthington Co. owed me about $50,000. These are round sums. I held a note against Thomas H. Willson for $4,000, and I had a note against the George Worthington Co. of $5,000. The $50,000 was an open account.

Q. 5. You may state whether that comprises the debts or obligations due you at that time.

A. That's all, except some small matters.

Q. 6. You may state now what your indebtedness was. What, if any, legal *bona fide* debts did you owe on that day, leaving out of the account all obligations to any mutual insurance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received or which you believed at the time of making such acknowledgment to be other than a safe consideration therefor, and all acknowledgments of indebtedness made

for the purpose of diminishing the amount of your credits to be listed for taxation, and to whom did you owe them?

A. I owed in the first place a note to the Society for Savings for $32,000. Then I owed jointly with another party, William Bingham, a note about $175,000, which, by agreement, I owe one-third of. Of course, I was liable on the entire note, but the agreement between us is I am to pay one-third and he two-thirds.

Q. 7. To whom did you owe that debt?

A. To the Society for Savings.

Q. 8. You may state whether both of these indebtednesses by you to the Society for Savings were evidenced by promissory notes.

A. Yes, a note signed by Mr. Bingham and myself, and the $32,000 note is signed by me alone.

Q. 9. One-third of the $175,000 is $58,333?

A. Yes.

Q. 10. Add to that the $32,000 makes $90,333.33?

A. Yes.

Q. 11. I put into your hands an affidavit. Did you file or cause to be filed with the auditor of Cuyahoga county, Ohio, this affidavit and demand which has already been offered in evidence as "Plaintiff's Exhibit Barnett" in the case of The Mercantile National Bank of Cleveland, Ohio, *vs.* Hubbard, and which purports to be signed by you?

381 A. Yes.

Q. 12. And did you leave that with the cashier of the bank and authorize him to deliver it to the auditor?

A. Yes.

Q. 13. You seek here to take out the difference between the nominal value of the 400 shares and your indebtedness of $90,000?

A. $90,000 less the $59,000 due me; $31,333 is the indebtedness over the value of my credits.

Cross-examination of JAMES BARNETT.

By Mr. BENNETT:

Q. 14. This affidavit to which Judge Boynton has called your attention is the only affidavit of claim and demand which you have filed?

A. Yes, for that year. I filed one since for last year's amount.

Q. 15. We are only inquiring now for the affidavits of 1897 that were filed for the set-off against your bank stock?

A. Yes, that's right.

Q. 16. You make claim for deduction here of legal *bona fide* debts amounting to $31,333?

A. Yes.

Q. 17. That's all?

A. Yes.

Q. 18. You have made no claim or demand in writing for any additional debts to be set off against your stock, have you?

A. No, sir.

Q. 19. After you made your affidavit on the 20th of May, 1897, state what you did with it.

A. I left it at the bank.

Q. 20. Did you give them any instructions what to do with it?

A. Well, yes. They were to hand it to the attorneys, I think, to Mr. Boynton, to the proper persons that had charge of it.

Q. 21. You introduced no testimony then before the county auditor in regard to your debits and credits, excepting that which is contained in this affidavit?

A. No, sir.

By Judge BOYNTON: We will agree that the only evidence that was presented in any of these cases was the filing of these affidavits by the respective bank cashiers.

Q. 22. You are a holder of national bank stock in the First national bank?

A. Yes, I had at that time, I think, 175 shares.

382 Q. 23. You did not make any claim for deduction on that?

A. No.

Q. 24. Within your affidavit, and for the purposes of the statements therein contained, you placed the valuation of par on this Mercantile National Bank stock, did you not?

A. Yes.

Q. 25. What was the true value in money at the time inquired about on the day preceding the second Monday of April of said stock?

A. The only gauge I'd have about that is, the stock was reduced some time ago and I received 100 shares. It was reduced 40 per cent. and they paid me back $16,000.

Q. 26. I understand by that that the capital stock of the bank was reduced from $1,000,000 to $600,000?

A. Yes, 40 per cent., and they paid back to the stockholders 100 cents on the dollar. I received for that 40 per cent. on those 400 shares $16,000.

Q. 27. But the balance went to increase the value of your remaining shares, did it not—the balance of the new capitalization?

A. I don't understand what you mean.

Q. 28. The value of your remaining shares was enhanced by the reduction of that stock, was it not?

A. That depends altogether. It might and might not.

Q. 29. Did any of the stockholders draw out any portion of the surplus fund or the undivided profits?

A. No, I got a check for the 40 per cent. of the stock, reduction in money, at par.

Q. 30. Do you know what the surplus fund was at that time? To the credit of that stock?

A. I think it was $200,000. The statement will show. I haven't anything before me to show positively. I think it is $200,000.

Q. 31. Do you know what the undivided profits less the expenses and taxes paid were in the month of April, 1897?

A. No, I haven't anything before me to show.

Q. 32. Was it not $89,413?

A. That has been sworn to, and that would be the better evidence. I do not know from personal knowledge. I have no doubt this statement is correct in this Financial Review.

Q. 33. What was the usual selling price of the stock in the month of May, 1897?

To which question plaintiff objected as irrelevant.

A. I could not tell anything about that, for I hadn't any for sale and didn't want to buy any.

383 Q. 34. If it had no usual selling price, what could be obtained therefor in money?

A. Their market reports would show that better than I could tell.

Q. 35. Didn't the quotations of May 3rd, 1897, in the city of Cleveland show that Mercantile National Bank stock was worth 135?

To which question plaintiff objected as irrelevant and on the further ground that the quotations themselves are the best evidence.

A. I would not undertake to say under oath what the value of the stock was at that time or any other time, for I am not a trader in bank stocks particularly, and I do not know its value.

Q. 36. You won't deny but what it was that high at that time?

A. I don't deny and I don't assert that it was. I don't know anything about it.

Q. 37. You have stated your additional credits at that time to have been $59,000. I understood you to say that the George Worthington Co. owed you $50,000, Thos. H. Willson $4,000, and who owes you $5,000?

A. That's George Worthington also. It is another account. That's the reason it is in two separate amounts.

Q. 38. Is the George Worthington Co. account an undivided profit account, or is it money you had advanced to them?

A. It is money due me from the firm on account. It is for various things in the operation of business.

Q. 39. Was the note given by you individually to the Society for Savings for money afterward invested in national bank stock?

A. No, sir, to my great grief it was to pay up losses made in a rolling mill. It went up the chimney and in envelopes to pay the men for their labor. We had about 500 men, and we had to pay those men for 15 days, and it represents that and a good deal of this $175,000. I went into this rolling-mill business, and I don't think I was in any condition to buy bank stock at that time. It all went to pay up these losses, all this $32,000.

Q. 40. State what the indebtedness for $175,000 was given for.

A. Mr. Bingham and I were as much responsible as anybody in this mill. We had to clean up the debts of this mill in the general cleaning up. That's a matter of a good many years ago and we made advancements to this mill in paying up their debts and in the final cleaning up the landed property was turned over to

384 Mr. Bingham and myself in the proportion that we owned there—Mr. Bingham two-thirds and I one-third. So, to settle

up everything, we borrowed money of the Society for Savings—$175,000—and gave them our note and the mortgage on the property down here. We are paying taxes on the property all the time, and interest on this $175,000 every six months.

Q. 41. What deposit in bank did you have on the day preceding the second Monday in April, 1897?

To which question plaintiff objected, and plaintiff's counsel instructed the witness that he need not answer the same unless he so desired.

A. The county returns will show if I had any. It is not very likely I had any. I don't usually expect to have very much.

Q. 42. Where was your bank account kept at that time?

A. At the First national.

Q. 43. You cannot state the amount then of deposit in the bank at that time?

A. No, I haven't any means here of knowing anything about it. Probably I didn't have much money.

401. Mercantile National.

AUGUST 30, 1898—2 p. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Hon. W. W. Boynton, counsel. Horr & Uhl, by Mr. Horr; Webster & Cook, by Mr. Cook, for complainant. S. M. Bennett and F. L. Taft, for respondent.

W. S. TYLER, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. HORR:

Q. 1. State your name, age and place of residence.

A. W. S. Tyler; age, sixty-three; 399 Euclid avenue, city.

Q. 2. What, if any, stock did you own in the Mercantile National Bank of Cleveland, Ohio, on the day preceding the second
385 Monday in April, 1897, and on the Wednesday next preceding the second Monday in May, 1897?

A. I owned 250 shares.

Q. 3. What, if any, legal claims and demands, whether for money or other valuable things, or for labor or services due or to become due to you, including deposits in banks or with persons in or out of this State other than such as are money, did you own on that day?

A. I do not at the present time recollect any.

Q. 4. What, if any, legal *bona fide* debts did you owe on that day, leaving out of the account all obligations to any mutual insurance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received, or which you believed at the time of making such acknowledgment to be other than a safe

consideration therefor, and all acknowledgments of indebtedness made for the purpose of diminishing the amount of your credits to be listed for taxation, and to whom did you owe them?

A. I had $15,000 at the Society for Savings, and $10,000 in Adelbert college, and $20,000 at the Mercantile national bank.

Q. 5. Did you file or cause to be filed with the auditor of Cuyahoga county, Ohio, this affidavit and demand which has already been introduced in evidence as "Plaintiff's Exhibit Tyler" in the Mercantile National Bank case, and which purports to be signed by you?

A. Yes.

Cross-examination of Mr. W. S. TYLER.

By Mr. BENNETT:

Q. 6. In this affidavit made on the 26th of May, 1897, Mr. Tyler, you set forth that you were indebted in legal *bona fide* debts at that time in the sum of $25,000, didn't you?

A. I won't trust my memory. I'll take it for granted that whatever is stated there is as I made it. My memory is a little bit treacherous, and some things I might not remember. It is correct as stated in my affidavit.

Q. 7. You filed no other claim or demand, except this one to which your attention has been called by your counsel, have you?

A. No.

Q. 8. And at that time you only sought to have $25,000 of your indebtedness deducted from your 250 shares of bank stock?

A. I supposed that was considered sufficient to cover it.
386 That's the form that is written. The indebtedness I spoke of existed at that time.

Q. 9. What was done with this affidavit? What did you do with it?

A. I simply signed it.

Q. 10. And then what did you do with it?

A. I had Mr. Murphy file it for me. He is connected with the Mercantile national bank.

Q. 11. You do not know as a matter of fact whether he filed it or not?

A. He advised me that he had filed it.

Q. 12. That is simply hearsay. You don't know. You didn't see him file it, did you?

A. I cannot say that I did. I instructed him to file it, and I presume he carried out my instructions. There is a lot of things that I have done that I do not see done but the results show that they have been done.

Q. 13. When you are informed by others that they are done, you are sure they have been done?

A. My company that I am president of——

Q. 14. What company are you president of?

A. The W. S. Tyler Wire Works Company.

Q. 15. How much of an interest did you have on the day preceding the second Monday of April, 1897?

To which question plaintiff objected, and plaintiff's counsel instructed the witness that he need not answer the same.

A. I object to answer.

Q. 16. What was your individual credit in that company set apart to you as your individual credit in April 1897?

A. I could not tell you.

Q. 17. Wasn't there any dividend standing to the credit of your stock and set apart to the credit of your stock at that time?

A. No, sir, there was not.

Q. 18. How do you know?

A. Because I know I rather overdrew. My dividend did not take care of what I was owing to the company. That's why I know, otherwise I probably should not be so clear on the subject.

Q. 19. Did you list any indebtedness here against your company, that you were indebted to your company?

A. I did not think it was necessary.

Q. 20. Take the $15,000 you owed the Society for Savings. Was any part of that $15,000 invested in these 250 shares of Mercantile National Bank stock?

A. No, sir.

387 Q. 21. What collateral have you to secure that?

A. I have the Mercantile Bank stock, 150 shares, to secure that—or, I did have at that time.

Q. 22. What is this amount to Adelbert college represented by?

A. 100 shares of the Mercantile National Bank stock.

Q. 23. Is that a loan?

A. Yes, it is a loan from Adelbert college.

Q. 24. The Mercantile national bank is your creditor to the sum of $20,000?

A. I am indebted to the Mercantile national bank for $20,000.

Q. 25. And were you in April, 1897?

A. Yes.

Q. 26. Does any part of that $20,000 go to apply on either of these other debts of yours?

A. No, sir. This is for money I borrowed to put in my business.

Q. 27. Did the company sign that note, and you borrow it to put into that business?

A. Yes, I am the company. Practically the company signed it, and I endorsed it.

Q. 28. That company you refer to, is what company?

A. The W. S. Tyler Wire Works Company.

Q. 29. That's an Ohio corporation?

A. Yes.

Q. 30. And it had signed this note to the Mercantile national bank, had it not?

A. Yes.

Q. 31. Who had signed it for the corporation?

A. I could not tell you positively. My impression is it was done with a stamp.

Q. 32. By whom?

A. By myself.

Q. 33. As president?

A. Yes.

Q. 34. The W. S. Tyler — Works Company is a solvent corporation, isn't it?

A. I so consider it, yes.

Q. 35. You are merely an accommodation endorser on that paper, are you not?

A. I don't know how you mean that.

Q. 36. You became the endorser on the paper at the time the company negotiated that loan, did you not?

A. Yes.

Q. 37. What did you deposit as collateral, if anything, to secure that loan?

A. I believe—I don't know that it is necessary for me to answer that.

388 Q. 38. Do you want to object to answering that?

A. I don't know whether I do or not. Is it pertinent to the question? You lawyers sometimes ask questions that are not pertinent. If it is necessary, I suppose there is no harm in my answering the question. There was no security put up. My name is considered sufficient for that money.

Q. 39. And the name of the corporation also?

A. Yes.

Q. 40. This wire works company received this money that was thus borrowed from the Mercantile national bank?

A. Yes.

Q. 41. It represents money that that corporation is indebted for?

A. No, it does not represent money that the corporation is indebted for. That note is an individual note of mine and the corporation has nothing to do with it. I took that money, and that can be ascertained at the bank. I took that money and put it into the corporation—into my business.

Q. 42. The corporation is on that note as principal, is it not?

A. No, the corporation is not on the note at all.

Q. 43. Then you wish to have that corrected?

A. If you please, yes.

Q. 44. How is that note signed?

A. W. S. Tyler. It is a personal matter, but I took that money after I got it, and I won't say I put it all in my business, but I put part of it in my business, and I think I put about all of it in.

Q. 45. Then does the corporation—the W. S. Tyler Wire Works Company—owe you that amount of money thus invested in that business?

A. No, they don't. I could not tell you now all the details of the transaction. I know there is no credit or debit passing either way. I was owing the company at the time I got this $20,000, but how much I don't remember. That was paid with part of this $20,000.

It is not a matter of any great moment perhaps, but I have been increasing my business very rapidly at times, and I had been making some investments outside, and part of this money I think went into some purchase of land, but I could not say positively with reference to that.

Q. 46. The investments outside that you speak of, were they real estate?

A. Yes.

Q. 47. Did you not receive a large amount of money from
389 the estate of James F. and Eliza Clarke since 1890, and have that money the second Monday of April, 1897?

To which question plaintiff objected, and plaintiff's counsel instructed the witness that he need not disclose any information as to these things.

Q. 48. In addition to the credits about which you have already testified, did you not have a credit which was due you from the parties above named?

A. No, there was not.

Q. 49. Did you have on hand any credits received from the estates of James F. and Eliza Clarke on the day preceding the second Monday of April, 1897?

A. I didn't know that the Clarke estate would come into this at all. No, I had none.

Q. 50. Do you say that at that time you had received nothing from that estate?

A. No, I didn't say so.

Q. 51. Whatever you received from that estate, had you invested it in any form of securities which you have denominated as credits?

To which question plaintiff objected, and plaintiff's counsel instructed the witness that he need not answer the same.

Q. 52. How much of an individual credit had you on the books of the W. S. Tyler Wire Works Company on the day preceding the second Monday of April, 1897?

A. I had none.

Q. 53. When you speak of investing this $20,000 in that corporation, did you not place that to your credit on the books of the corporation or have it so placed?

A. No.

Q. 54. What had you to evidence your investment of $20,000 in the W. S. Tyler corporation?

A. I could not answer. I told you as definitely as I could. This was borrowed quite a number of years ago, or several years ago. I cannot tell you just how many. I don't know that my books would show how that money was all invested—that $20,000. I did not say that it was invested in the W. S. Tyler corporation.

Q. 55. If it was, what portion was so invested?

A. I could not tell you.

Q. 56. Could you by looking at your books?

A. I don't think so.

Q. 57. Did you just take $20,000 and bodily stick it into that works, without getting credit for it in any way?

A. Hardly.

Q. 58. What evidence of investment if any have you in the W. S. Tyler Wire Works Company?

390 A. I am not sure, I could not tell without looking whether that wasn't put in before it was organized as a corporation. I am not sure about that.

Q. 59. When was it organized as a corporation?

A. It was, I believe, in 1888, but I am not positive as to that.

Q. 60. How long have you owed the Mercantile national bank $20,000?

A. Quite a number of years.

Q. 61. And hasn't that been renewed?

A. It is renewed from year to year.

Q. 62. The last time it was renewed how was the note signed?

A. W. S. Tyler. I told you it was a personal matter, I can only repeat that.

Q. 63. But it went into the W. S. Tyler works?

A. No, I said there might some of it have gone in. I am not sure now that it was a corporate concern at the time I borrowed this money, as I think it over now I am rather inclined to think it was not, so you can see how indefinite my remembrance of it is. I am not here for the purpose of making any point, although I see from your questions that you anticipate that. I can give you the date that the note was made today, and then I can tell you more definitely about it.

Q. 64. What bank did you do your banking with in April 1897?

To which question plaintiff objected as irrelevant cross-examination.

A. (Witness made no audible reply.)

Q. 65. Did you have deposits in bank or with persons in or out of this State, with persons, other than such as are held to be money?

A. No.

Q. 66. Did you have a deposit in the Mercantile national bank in April, 1897?

To which question plaintiff objected as irrelevant cross-examination and as impertinent.

A. I didn't have a personal account in the Mercantile national.

Q. 67. Did you run your personal account in the name of the W. S. Tyler Wire Works corporation?

A. No, sir, I can tell you where I did have it.

Q. 68. Where, if at all, did you keep your account?

A. In the East End savings bank.

Q. 69. Did you have a deposit in the East End savings bank on the day preceding the second Monday in April 1897?

A. If I did, I had so little that it didn't count. I have a deposit there for convenience to check out as I want it.

391 First, Western Res., Mercantile, Commercial, & Nat'l Bank of ——.

ORVILLE L. JONES, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. HORR:

Q. 1. Please state your name, age and place of residence.

A. Orville L. Jones, 49, 16 Cheshire street.

Q. 2. What if any stock did you own in the First national bank, the Western Reserve national bank, the Mercantile national bank, the Commercial national or the National Bank of Commerce, all of Cleveland, Ohio, on the day preceding the second Monday in May, 1897?

A. 31 in the Western Reserve national, 30 in the Mercantile national, 62 in the Commercial national, 26 in the National Bank of Commerce and 75 in the First national.

Q. 3. What if any legal claims and demands whether for money or other valuable things, or for labor or service due or to become due to you including deposits in banks or with persons in or out of this State other than such as are money, did you own on that day?

A. None.

Q. 4. What, if any, legal *bona fide* debts did you owe on that day, leaving out of the account all obligations to any mutual insurance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received or which you believed at the time of making such acknowledgment to be other than a safe consideration therefor, and all acknowledgments of indebtedness made for the purpose of diminishing the amount of your credits to be listed for taxation, and to whom did you owe them?

A. I owed $13,000 at the Society for Savings, and $15,000 to the National Bank of Commerce.

Q. 5. I show you the affidavits and demands which have already been offered in evidence in each of these respective bank cases as "Plaintiff's Exhibit, O. L. Jones," and ask you to state whether you filed or caused them to be filed with the auditor of Cuyahoga county?

A. Yes.

Cross-examination by Mr. BENNETT:

Q. 6. How much of this indebtedness was created for the
392 purpose of investing in these shares of national bank stock, if any?

A. None.

Q. 7. Your national bank stock was fully paid, independent of the indebtedness which you have created otherwise?

A. Yes.

ORVILLE L. JONES deposes and says further as follows in behalf of the Mercantile National Bank:

Direct examination.

By Mr. HORR:

Q. 1. What official position did you hold during the calendar year of 1897?

A. I was deputy county auditor.

Q. 2. Under Mr. Akins?

A. Yes.

Q. 3. As deputy county auditor what did you have to do at Mr. Akins' request with the returns made by the national banks of Cleveland for that year?

A. I took the returns and tabulated them.

Q. 4. Did you make any computations based on those returns for the purpose of arriving at the valuation to be put upon the stock?

To which question defendant objected unless said computations are before the witness.

A. I tabulated those returns and put the value on about the same as they had been assessed the year before.

Q. 5. Did you preserve the computations which you made, the actual figures which you made in putting these values on?

A. No.

Q. 6. What in fact was the valuation which your computation resulted in, as compared to the face value of the capital stock, surplus and undivided profits, of the respective banks?

To which question defendant objected.

A. Following Mr. Akins' predecessor, he made a regular 60 per cent. basis. But I tabulated it on the same basis and left it for Mr. Akins to change as he saw fit.

Q. 7. You turned the results of your computation over to Mr. Akins?

A. Yes.

Q. 8. And when you turned them over, the valuation which you had expressed was about 60 per cent. of the face value?

393 To which question defendant objected.

A. Yes. Where a bank has real estate, it would be more than where it didn't have real estate.

Q. 9. In making your computations, did you deduct from the sum total of capital stock, surplus and undivided profits the assessed value of the real estate of the banks that had real estate?

A. I deducted the book value.

Q. 10. From the capital stock, surplus and undivided profits?

A. Yes.

Q. 11. You took 60 per cent. of the balance?

A. I said it was about the same basis that they had been assessed the year before.

Q. 12. Do you know whether the results reported by you in that

manner to Mr. Akins were changed by him before he made his valuation of the stock?

To which question defendant objected because it is a matter of record.

A. In some cases he changed them perhaps, after an interview with the cashier. If he wasn't satisfied with the return, and saw a great discrepancy between the return made to the office and that published, he would call them in for an explanation, and he might have raised some.

Q. 13. Do you know as a matter of fact whether there were any changes made?

To which question defendant objected.

A. I cannot be positive now. It seems to me he changed them some.

Cross-examination of ORVILLE L. JONES.

By Mr. BENNETT:

Q. 14. How long did you remain in the county auditor's office? Are you still his deputy?

A. Yes.

Q. 15. You were in April and May, 1897, I believe?

A. Yes.

Q. 16. The computations that you made, you made from the returns as made to the county auditors by the said several banks, did you not?

A. Yes.

Q. 17. You will not now say whether those were true returns or false returns, will you?

A. They made a return there and they swore to it that it was the correct return for taxation.

Q. 18. You made no computations at all from their returns
394 made at the same time to the Comptroller of the Currency, and instituted no comparison between such returns and the returns made for taxation, did you?

A. Yes, that is to say, Mr. Akins did.

Q. 19. Mr. Akins was the auditor at that time?

A. Yes.

Q. 20. Now, didn't Mr. Akins, under the direction given by the State auditor to him, require to be returned as part of the returns of the national banks, a copy of the report made to the Comptroller of the Currency last prior to the date of the return for taxation?

A. We had this book that is published here, the Financial Review. That is what we used. The heading in the bank blank states what is required of them, and among other things is the report you speak of.

Q. 21. That's required by the form prescribed by the State auditor, is it not?

A. Yes.

Q. 22. So in order to supply that, you took the comptroller's return as made for the month of May, 1897, did you not?

A. Yes.

Q. 23. When I say the "comptroller's return" I mean the return to the Comptroller of the Currency. What did you find the fact in percentages between the comptroller's return—I mean the return to the comptroller—and the return for taxation? Which is the greater?

To which question plaintiff objected as irrelevant cross-examination.

A. I do not know. Mr. Akins was making figures on that, I think, when he testified here. I never made any figures on that. I didn't assist him in that part at all.

Q. 24. Did you not know this to be the fact, that the banks in their returns made the deduction of a horizontal per cent. for bad paper, prior to making their return to the auditor for taxation?

A. My recollection is, some of them stated when they were called in in regard to the matter——

By Mr. HORR:

Q. Were you present?

A. I heard some of them. They stated that that was allowed by the auditor of State when they had their session before him some years prior.

Q. 25. On that return so made you say you made the 60 per cent.?

A. I didn't say 60 per cent. I say it was about 60 per cent.

Q. 26. You did not include the value of the real estate, but deducted the book value of the real estate?

395 A. Yes.

Q. 27. That you had always done? Would they always deduct the book value of the real estate?

A. It seems to me that they should be upon the same basis as individual, therefore we used the book value. Another thing would be why we would use the book value, because some would take out before they made the return to the auditor the difference between the tax value and the book value. Some would be paying upon the difference between the book value and the tax value, and others would not.

Q. 28. Was you the party that sent out in Mr. Akins' name the letters to the various national banks in this city, notifying them of the action of the State board for the equalization of bank shares in December, 1897?

A. I don't know whether I mailed them, or whether some of the clerks mailed them.

Q. 29. Did you get up the letter?

A. No, sir.

Q. 30. Do you know that such letters, such notices, were sent to each of the several national banks of the city, notifying them of the action of the State board for the equalization of bank values?

A. Yes.

Q. 31. Did all of said banks or any of them appear before the county auditor after that?

A. I don't know whether they did or not.

Further hearing of depositions adjourned to 9 a. m., August 31, 1898.

AUGUST 31, 1898—1.30 p. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Horr & Uhl, by Mr. Horr. Webster & Cook, by Mr. Cook, for complainant. S. M. Bennett, for respondent.

A. L. WITHINGTON, a witness produced in behalf of said complainant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. COOK:

Q. 1. Please state your name, age and place of residence.

396 A. A. L. Withington, 55, 1593 Euclid avenue.

Q. 2. You may state what, if any, stock you owned in the Euclid Avenue national bank, the Mercantile national bank and the Union national bank, all of Cleveland, Ohio, on the day preceding the second Monday in April, 1897, and on the Wednesday next preceding the second Monday in May, 1897?

A. I owned 10 shares in the Euclid Avenue national 30 shares in the Union national, and 30 shares in the Mercantile national.

Q. 3. What, if any, legal claims and demands, whether for money or other valuable things, or for labor or services due or to become due to you, including deposits in banks or with persons in or out of this State other than such as are money, did you own on that day?

A. Outside of an accruing salary I hadn't credits over $400 of any kind.

Q. 4. What, if any, legal, *bona fide* debts did you owe on that day, leaving out of the account all obligations to any mutual insurance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received or which you believed at the time of making such acknowledgment to be other than a safe consideration therefor, and all acknowlegdment of indebtedness made for the purpose of diminishing the amount of your credits to be listed for taxation, and to whom did you owe them?

A. My *bona fide* debts amounted to something over $18,000; $8,000 to the Peoples' Savings & Loan Association, $2,000 to the Central national bank, $1,900 at the Savings and Trust Company, and then there was between $5,000 and $7,000 that I owed on my house. It is in notes of the regular amounts, something less than $7,000 and more than $5,000, about $6,000—a mortgage.

Q. 5. Did you file or cause to be filed with the auditor of Cuyahoga county, Ohio, this affidavit and demand which has already

been offered in evidence as "Plaintiff's Exhibit Withington," in the Euclid Avenue national bank, and which purports to be signed by you?

A. Yes.

Q. 6. I repeat the same question as to the Mercantile national bank.

A. I did.

Q. 7. And also the same question as to the Union national bank?

A. I did.

397 Cross-examination of A. L. WITHINGTON.

By Mr. BENNETT:

Q. 8. How much of this indebtedness Mr. Withington, was created or incurred in the buying or paying for the national bank stock that you have testified to as being the owner of?

A. None whatever.

Q. 9. Was any portion of this stock pledged as collateral to secure any of this indebtedness on the day preceding the second Monday of April, 1897?

A. Yes.

Q. 10. How much, if any?

A. It was all pledged in the indebtedness for building my house.

Q. 11. Who holds the mortgage indebtedness against the real estate?

A. The man's name is S. M. Neville.

Q. 12. Where does he live?

A. His residence at that time was in New York.

Q. 13. You say you had no additional credits except the bank stock, probably $400?

A. What I said was my salary that was accruing and my credits was less than $400.

Q. 14. Does this represent the true amount of indebtedness on the day preceding the second Monday of April, 1897, that you then owed?

A. Yes.

Q. 15. How much did you claim to deduct from your bank stock in the demands and affidavits which you have testified to having signed?

A. I made out the affidavits to cover the amount of the stock, $33,000 in two cases, and $1,000 in the other, which I supposed was the proper way.

Q. 16. You did not include these $18,000 as your total indebtedness at that time?

A. I didn't suppose it was necessary. I stated enough to cover the credits. I had no motive in the matter whatever.

Q. 17. Your affidavit made on the 17th day of June, 1897, only claims a deduction of $3,000. Is that not true?

A. Over and above all other credits, which I supposed was over this other $3,000, and over the other $1,000.

Q. 18. You filed no other affidavit and made no other proof before the auditor than that contained in that affidavit?
A. No, sir.

398 SEPTEMBER 15TH, 1898—10 a. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Hon. W. W. Boynton, counsel, Horr & Uhl, by Mr. Horr, Webster & Cook, by Mr. Cook, Hoyt, Dustin & Kelly, by Mr. McKean, for complainant. F. S. Monnett, S. M. Bennett, H. P. Kaiser, and F. L. Taft, for respondent.

WILLIAM BINGHAM, a witness produced in behalf of said complainant, being duly sworn, testified as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. State your name, age and place of residence.
A. William Bingham, age eighty-two, residence Cleveland.
Q. 2. How long have you lived in Cleveland?
A. Sixty odd years.
Q. 3. What, if any, stock did you own in the Mercantile National Bank of Cleveland, Ohio, on the day preceding the second Monday in April, 1897, and on the Wednesday next preceding the second Monday in May, 1897?
A. I owned the 15,000 shares in the Mercantile national bank less their reduction forty per cent. That would be $9,000.
Q. 4. I am speaking of April, 1897. Had they reduced it then?
A. $15,000.
Q. 5. Nominal value $100 a share?
—. ——.
Q. 6. What, if any, legal claims and demands, whether for money or other valuable things, or for labor or services due or to become due to you including deposits in banks or with persons in or out of this State other than such as are money, did you own on that day?
A. Substantially nothing.
Q. 7. What, if any, legal *bona fide* debts did you owe on that day, leaving out of the account all obligations to any mutual insurance company, all unpaid subscriptions for religious, scientific, literary or charitable purposes, all acknowledgments of indebtedness founded on some consideration not actually received or which you believed at the time of making such acknowledgment to be other than
399 a safe consideration therefor, and all acknowledgments of indebtedness made for the purpose of diminishing the amount of your credits to be listed for taxation, and to whom did you owe them?
A. At the old Society for Savings Gen. Barnett and I owe $175,000. I am to pay two-thirds of that by contract.
Q. 8. You were indebted to the Society for Savings on the day

preceding the second Monday of April, 1897, in the sum of two-thirds of $175,000?

A. Yes.

Q. 9. How was that obligation evidenced?

A. By notes and mortgages.

Q. 10. You and Gen. Barnett went into a little foundry enterprise at one time, and took the property, and the property you mortgaged to secure this debt?

A. Yes.

Q. 11. Perhaps you still owe that debt?

A. I do, I am sorry to say.

Q. 12. I put into your hands an affidavit. Did you file or cause to be filed with the auditor of Cuyahoga county, Ohio, this affidavit and demand which has already been offered in evidence as "Plaintiff's Exhibit William Bingham," in the Mercantile National Bank case, and which purports to be signed by you?

A. That's my signature.

Q. 13. You may state whether you caused that affidavit to be filed with the auditor?

A. I did.

Q. 14. Leaving it with the cashier of the bank for that purpose?

A. Yes, with the cashier.

Cross-examination of WILLIAM BINGHAM.

By Mr. MONNETT:

Q. 15. Mr. Bingham, what was the name of the firm of which you say yourself and General Barnett composed?

A. The Cleveland Iron Company.

Q. 16. A corporation?

A. Yes.

Q. 17. Did that corporation borrow that as a corporation, and sign the corporate note?

A. No, sir; it was an individual note of General Barnett and myself.

Q. 18. They were not on the note as a corporation?

A. Not at all.

Q. 19. What collateral security did you deposit with the Society for Savings for that loan?

400 A. A mortgage on the real estate of the corporation.

Q. 20. How much was that mortgage of the corporation to you?

A. About $700,000.

Q. 21. A mortgage for $700,000?

A. The mortgage wasn't for $700,000, but our debt has cost us—I cannot tell you now, it is so many years ago—it is some three or four times what we ever expect to get out of it.

Q. 22. Give us briefly the history of that. How is it that it is your personal debt, and what assets have you to offset that debt or to indemnify you?

A. The concern went up. We were the only solvent stockholders,

and we had a judgment against the concern of $500,000 or $600,000, and we took the property and then mortgaged it to this bank for $175,000, and paid the debts of the corporation.

Q. 23. What became of that mortgage paper which you held as credit that $700,000 mortgage?

A. It was canceled by the judgment.

Q. 24. What became of the property?

A. It came into our hands.

Q. 25. Is there a balance yet left of $175,000 without any collateral?

A. No collateral except the mortgage.

Q. 26. The mortgage is still alive then?

A. Yes, the mortgage to the bank is alive.

Q. 27. That mortgage is from you, or from the corporation?

A. From us.

Q. 28. Then you do have a credit; isn't that mortgage made to you?

A. No, it is made to the bank by us.

Q. 29. How long did you carry the debt of $175,000 at the bank as your debt on collateral security, and what was that security?

A. They never had any security, than this mortgage, that I know of.

Q. 30. Does the real estate stand in your individual names?

A. I don't remember. I don't think—I know the real estate now stands in the name of Bingham and Goodwillie.

Q. 31. Where is that real estate?

A. Down on the flats here in the city; General Barnett and myself are getting to be pretty old men.

401 Redirect examination of WILLIAM BINGHAM.

By Judge BOYNTON:

Q. 32. You and General Barnett were the two solvent stockholders in that corporation?

A. Yes.

Q. 33. And the property was deeded to you by the corporation?

A. No, by the court.

Q. 34. In some proceeding, the title came to you?

A. Yes.

Q. 35. And you borrowed on the strength of that title $175,000 to pay the indebtedness of the corporation?

A. Yes.

Q. 36. Instead of paying it out of your own books as individual liable stockholders?

A. Yes.

Q. 37. And the Society for Savings still holds that debt against you, secured by that mortgage?

—. ——.

Q. 38. Have you any valid claims of the company to you, to balance that $175,000?

A. Not a cent.

Recross-examination of WILLIAM BINGHAM.

By Mr. MONNETT:

Q. 39. When did this property come into your name or your name and that of your son-in-law? Is it not in General Barnett's name?

A. After this transaction some years ago, the General and I are getting to be pretty old men, we concluded to deed that property to my son and his son-in-law, so the title would be perfect in somebody who might sell it when we were dead.

Q. 40. Subject to this mortgage that is on it?

A. Yes, of course.

Q. 41. Have you no other credits than this $15,000?

A. Not a dollar left. That's the only thing I have got. Everything has gone in to pay the debt of this corporation.

OCTOBER 13TH, 1898—9 a. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Hon. W. W. Boynton, counsel, Webster & Cook, by Mr. Cook, Horr & Uhl, by Mr. Horr, for complainant. M. G. Norton and P. H. Kaiser, for defendant.

402 JOSEPH COLWELL, a witness called on behalf of the Mercantile national bank, being first duly sworn, testified as follows:

Direct examination.

By Judge BOYNTON:

Q. 1. What is your name, age and place of residence?

A. Joseph Colwell, 54 years of age, Cleveland, Ohio.

Q. 2. You are vice-president of the Commercial national bank?

A. Yes.

Q. 3. You may state what notice the Commercial national bank or any of its officers had that the State board of equalization for bank shares at Columbus was about to or was taking any action relating to the increase of the valuation of the shares of the Commercial national bank as fixed by the county auditor in the month of November or December, 1897? I mean to say, what information you had as to any action they were taking in either of those months, of November or December, 1897?

A. The only notice I am aware of was through the county auditor here, who informed me of the increased valuation placed upon the shares.

Q. 4. Before that information given you by the auditor, had you any information of any of the board's meetings at Columbus?

To which question defendant objected.

A. I had none whatever.

Q. 5. You may state whether or not the State board of equaliza-

tion for banks in the year 1897 gave to any of the banks, to your knowledge, any notice of their meetings held to hear complaints and equalize the valuation of national bank shares for 1897.

To which question defendant objected.

A. No, none to my knowledge.

Q. 6. Were you a member of a committee that visited the State board of equalization for banks at Columbus during the month of December, 1897?

A. I was.

Q. 7. You may state if anything was said in your interview with the members of the board about the banks here not having notice of their meetings, and if so, what was it?

To which question defendant objected.

A. The committee were there, but I can't say which member of the committee called the attention of the board to their mission
403 to notify us of any meeting or hearing, and their reply was that the State statute was sufficient notice to us.

Q. 8. You may state whether they claimed to have given any other notice.

To which question defendant objected.

A. They did not.

Q. 9. What did they say about hearing you then at that time?

To which question defendant objected.

A. They said that the State board had adjourned *sine die*, and couldn't be brought together again for any hearing of our committee.

Q. 10. You may state about what time in the year it was that you had this meeting with them.

To which question defendant objected.

A. Very late in the year, I think in December.

Q. 11. And when the attention of the members was called to the fact, the officers of the bank here had no notice of their meetings or contemplated action, their reply, as I understand you, was that the statute notified you when they would be called together, or substantially that?

To which question defendant objected and moved the court to strike out all of this line of inquiry and all that has been said on this subject about conversations at Columbus.

A. Yes, sir.

Cross-examination of Mr. COLWELL.

By Mr. TAFT:

Q. 12. In the certificate you stated you filed claiming an offset on account of the indebtedness, what amount did you claim in that certificate?

A. $22,000. I claim an offset of all the tax on shares.

Q. 13. On the debt you owed to the Society for Savings, what security, if any, have you given for that?

A. The stock of the Commercial national bank.

Q. 14. How many shares?

A. 154, I think.

Q. 15. And when was that indebtedness created?

A. I can't recollect.

Q. 16. And is that all the security that is deposited?

A. Yes, sir.

Q. 17. And about when was that indebtedness created?

A. I can't recollect; it has run several years—quite a number of years.

404 Q. 18. And was any part of that indebtedness created for the purpose of purchasing stock in the Commercial national bank?

A. Not that I recollect.

Q. 19. When did you acquire that?

A. I am unable to say without looking at books, but it is several years ago.

Q. 20. But has this indebtedness been standing at the Society for Savings as long as you have owned the stock?

A. No, I think not.

Q. 21. And what was the money that you secured from the Society for Savings used for?

A. In business transactions; I couldn't recollect for just what without looking up books. It stood quite a number of years.

Q. 22. Was the entire amount secured at one time?

A. Yes, sir.

Q. 23. What purpose was it secured for then, if you secured that much at one time?

A. What was it used for I can't say now.

Q. 24. But you wouldn't be securing $15,000 at one time from the Society for Savings without knowing what it was for, would you?

A. At the time, certainly not.

Q. 25. Can you not now recollect?

A. I can't.

Q. 26. Could you find out?

A. I presume I could after looking at my books.

Q. 27. Will you?

A. I will if you so desire.

Q. 28. And on the indebtedness of $7,000 to Mr. Otis, what security, if any, have you given him for that indebtedness?

A. I gave him 50 shares of the Commercial National Bank stock.

Q. 29. Is that all the security he has got?

A. That is all, yes, sir.

Q. 30. He is president of your bank, is he?

A. He is now, yes, sir.

Q. 31. In this affidavit, you claim an offset of legal *bona fide* debts

in the sum of $22,000. That is the only affidavit that you filed claiming an offset in the year 1897?

A. Yes, sir.

Q. 32. What was the value of stock in the Commercial national bank on the day preceding the second Monday in April, 1897, the true value in money?

A. That is a hard thing to answer. It is largely a matter of opinion. I don't know of any sales at that time that would make a price for it, a true value in money.

405 Q. 33. If you don't know what the true value of it in money was, what was the usual selling price at that time?

A. I can only guess at it.

By Judge BOYNTON: I object to the witness guessing at it.

Q. 34. Well, now, if there was not a usual selling price known to you, then what price did you believe could have been obtained therefor in money at that time?

A. I should say somewhere from 120 to 130 shares.

Q. 35. What were the market quotations about that time?

A. I don't know.

Q. 36. Do you think as much as $130 could have been obtained for the stock?

A. I put that as an outside figure; I don't know that they could have been obtained for that.

Q. 37. Isn't it a fact that it was quoted at more at that time?

A. My impression is it was not.

Q. 38. How long has the loan to Charles A. Otis been standing?

A. I am unable to say; several years.

Q. 39. Was any part of that money used in the purchase of shares of stock in the Commercial national bank?

A. No, I think not.

Q. 40. What was it used for?

A. For other transactions; I can't recollect what now.

Endorsements on part third.

Part third. Mercantile National Bank *et al.*, *vs.* R. S. Hubbard, treasurer. Filed Feb. 15, 1899. Irvin Belford, clerk, U. S. circuit court, N. D. O.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio.
} No. 5714. Chancery.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United
406 States, for said district, do hereby certify that the annexed and foregoing pages embraced in volume 2 contain a full and true copy of the depositions of Theodore M. Bates, Albert E. Akins, John Van Nostran, James Molyneaux, Norton T. Horr, Edwin R. Perkins, Samuel E. Williamson, Thomas H. Wilson, J. J. Sullivan, W. G. Mather, James Barnett, W. S. Tyler, Orville L. Jones, A. L. Withington, William Bingham, and Joseph Colwell, together with stipulations and exhibits filed on behalf of complainant as therein noted, the originals of all which are on file in my office and in my custody as clerk of said court.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at Cleveland, in said district, on this 31st day of January, A. D. 1900, and of the 124th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk*,
By JNO. VAN NOSTRAN, *Deputy*.

PART FOURTH.

Defense.

OCTOBER 13, 1898—9 a. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Hon. W. W. Boynton, counsel; Webster & Cook, by Mr. Cook; Horr & Uhl, by Mr. Horr, for complainant. M. G. Norton and P. H. Kaiser, for defendant.

PETER R. FAHEY, a witness produced in behalf of said defendant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. MONNETT:

Q. 1. Please state your name, age and place of residence.

A. Peter R. Fahey; age, 32; 82 Ingleside avenue.

Q. 2. What has been for the last few years your general business?

A. Broker business generally, buying and selling stocks, bonds and investments and securities.

Q. 3. In the county of Cuyahoga?

A. Yes.

407 Q. 4. You may state whether during the year 1897, especially in May, by reason of your business investments and selling and disposing of stocks and bonds, you had occasion to investigate and determine the market value or the real or true value of the Mercantile National Bank stock, and if you can refresh your memory from any memoranda you have, you may give that.

To which question plaintiff objected because of its indefiniteness in relation to the particular value that counsel are inquiring about, as to be incapable of an answer. Also on the ground that the memorandum referred to speaks for itself, if the witness has such a memorandum.

A. I will answer that question in the negative, no. I would like to say that this particular department of our business is under another man of our firm, who would be better able to answer questions along these lines.

Q. 5. Who is that man?

A. Mr. Calvert has particular charge of this local department of our business.

Q. 6. From the knowledge you have, what was Mercantile National Bank stock worth on or about May 20, 1897?

To which question plaintiff objected on the ground that it appears from the statement of the witness that he has not sufficient knowledge to enable him to form an opinion.

A. About 130 a share. (Witness uses the file of the Cleveland Leader as a memorandum.)

Q. 7. So that its market price in the market, to the best of your information and belief, was about 130 a share?

To which question plaintiff objected as leading.

A. I would say that while that was the nominal market value, it would not necessarily follow that you could sell every share of the bank at that price. If you were to go in the market to sell 10 or 100, you might obtain that price. But if you were going to offer half of the capital stock, it is not very probable; it would naturally have a tendency to depress the market.

Q. 8. In other words, if they would dump a large lot of bank stock, that would be indicative of some wrong?

A. Yes, and I would say further that because of their not having an exchange here, or any authoritative source of quotations, these prices are more susceptible to orders than they would be if they were going through the clearing-house. If a man goes to sell 100 shares of stock, the conclusion is that there must be something. And if a man wants to buy, a man jumps to the conclusion that he wants it real bad.

408 Q. 9. 130 was about the average market value?

A. Yes.

Q. 10. It might have been some higher and some lower?

To which question plaintiff objected as leading.

A. Yes, you might have to pay 135. If you wanted 3 or 6 or 10 shares it would be sold at about 130.

Q. 11. Is May 15th the nearest you can come to it?

A. That's the only one I saw in there.

Q. 12. What was the value of said stock about May 23, 1897?

Objected to on the ground that witness refers to a newspaper for his information and his guide, not giving his opinion.

A. I would say about the same—130 to 135.

Q. 13. I will call you- attention to the stock of the National Bank of Commerce for the same days. Give about what the market value of the bank shares of the National Bank of Commerce was at those periods.

Same objection upon the same ground.

A. About the same.

Q. 14. How much?

A. 130.

Q. 15. Give the same dates, and the value of the stock of the Commercial national bank.

Same objection on the same grounds.

A. I don't find it recorded here. About 125.

Q. 16. What would you say to the best of your knowledge and belief as to the value of the Central National Bank stock on those dates?

Same objection upon the same grounds.

A. 130.

Q. 17. What would you say to the best of your information and belief as to what the value of the National City bank was on those dates?

Same objection upon the same grounds.

A. The National City Bank stock is worth 180 or more.

Q. 18. What would you say, to the best of your knowledge and belief, as to the value of the Western Reserve Bank stock on those dates?

Same objection upon the same grounds.

A. I would say from 125 to 135.

Q. 19. What would you say, to the best of your information and belief, as to the value of the First National Bank stock *was* on those dates?

Same objection upon the same grounds.

A. I haven't any recollection of the value of that stock.

409 Q. 20. What would you say, to the best of your knowledge and belief, as to the value of the Cleveland National Bank stock on those dates?

Objected to upon the same grounds.

A. Nor that either.

Q. 21. What would you say, to the best of your knowledge and belief, as to the value of the State National Bank stock on those dates?

Objected to upon the same grounds.

A. 120 to 130.

Q. 22. What would you say, to the best of your knowledge and belief, as to the value of Union National Bank stock on those dates?

Objected to upon the same grounds.

A. I could not say as to that either.

Q. 23. What would you say, to the best of your knowledge and belief, as to the value of Park National Bank stock on those dates?

Objected to upon the same grounds.

A. About 120.

Q. 24. What would you say, to the best of your knowledge and belief, as to the value of Euclid Avenue National Bank stock on those dates?

Objected to upon the same grounds.

A. It was worth probably 140 to 145.

Q. 25. Can you tell anything from these official reports?

A. No, sir, the market value is not given there.

Q. 26. You are in the business, and were at the time you refer to in a general way?

A. Yes, in a general way.

Q. 27. By refreshing your memory and looking at these dates you say that is substantially the market price on those dates?

Same objection upon the same grounds.

A. Yes.

Q. 28. You remember that independent of this record?

Objected to.

A. Yes.

Q. 29. Was there much variation from the prices given here on those dates?

A. Very slight.

Q. 30. Would it exceed 5 per cent.?

A. About 5 per cent., it might vary that much.

Cross-examination of PETER FAHEY.

By Judge BOYNTON:

Q. 31. You have been refreshing your memory from a
410 newspaper before you in giving your testimony-in-chief. Will you kindly give the name of that newspaper?

A. The Cleveland Leader.

Q. 32. And in drawing your data you may state whether you relied upon the statements made in the Leader as to the valuations fixed by you upon the shares?

A. Slightly so.

Q. 33. What member of your firm is it that is more particularly informed on the market value of shares of national banks of the city than yourself?

A. No member of the firm, but an employé.

Q. 34. What is his name?

A. G. M. Calvert.

Q. 35. I understood you to say that this department of the business was lodged with this young man?

A. Principally so, yes.

Q. 36. And the business transacted by you in your work relates to other matters?

A. Yes.

Q. 37. Do you know the value of the resources over the liabilities of any bank of whose stock you have spoken?

A. No, sir.

Q. 38. Did you know anything about the character of their resources in the year or spring of 1897?

A. No, sir.

Q. 39. Did you know how much bad or uncollectible paper any of the banks the value of whose shares you have undertaken to state—the market value of whose shares you have stated—had in April or May, 1897?

A. No, sir.

Q. 40. Had you any personal knowledge of the intrinsic value of the shares of any of these banks?

A. No, sir.

Q. 41. Your judgment has been formed entirely or partly from what has been reported in the newspapers respecting the market value of the shares?

To which question defendant objected.

A. Only partly.

Q. 42. Did you purchase any shares of any one of these banks in the month of April or May, 1897?

A. No, sir.

Q. 43. Did you sell any shares of any of the banks in either of those months?

A. No, sir.

Q. 44. Did your firm buy or sell in April or May, 1897?

A. I could not say positively, I rather think not.

Q. 45. Whatever information you have on the subject of
411 the market value of shares is not derived from any actual purchase or sale made by yourself or your firm?

A. No, sir.

Q. 46. Is it not true Mr. Fahey, that the reported market value of shares of bank stock in the newspapers stands on the same figure

often for a long time, because of the fact that there are no transfers during that period of time?

A. Yes.

Q. 47. And is it not true that the market value would stand at that figure, although the intrinsic value of the shares may have increased or decreased during that time?

Objected to.

A. It is possible.

Q. 48. For instance if the shares of stock of the Mercantile national bank are quoted on a given day by the newspapers at 130 a share, it would remain at that figure as stated in the newspapers till the proprietors of the paper had some information from additional sales that the price had gone up or down?

To which question defendant objected.

A. As I understand, the newspapers have an arrangement by which they get a revised list probably once a week, and they publish it just about that often. Any change between that time would hardly be noticed.

Q. 49. I understand your newspaper reports are made up from information given by street brokers to newspaper men?

A. Yes; entirely by street brokers.

Q. 50. And written into the newspapers?

A. Yes.

Q. 51. And until such broker advises the paper of a change as to the market value of certain shares, they remain in the paper at that figure although the bank in the meantime may have sustained enormous losses, making its stock intrinsically worth much less?

To which question defendant objected.

A. The papers only publish this list one day and it is dropped out then. There is no quotation at all till the new list comes out. Each paper has its own different arrangement as to that.

Q. 52. And until such broker advises the paper of a change as to the market value of certain shares, they remain in the paper at that figure although the bank in the meantime may have sustained enormous losses, making its stock intrinsically worth much less?

To which question defendant objected because it is a calamity that never happened to any bank here in Cleveland.

412 Q. 53. (cont.) I will ask you whether it don't stand at the figure named until there has been some change in the value, although the bank may have sustained some loss in the meantime?

A. Yes; the list remains as published in the meantime.

Q. 54. You have already stated that you have no knowledge personally of the value of the resources of any of the banks, compared with its liability?

A. No, sir, I have not.

Redirect examination of PETER FAHEY.

By Mr. MONNETT:

Q. 55. I will ask you whether you are familiar with the official report made by the bank to the Comptroller of the Currency that they publish annually in the Leader and other papers in the city of Cleveland, which are filed with the auditor officially, showing the resources, liabilities and surplus and undivided profits?

To which question plaintiff objected because it is immaterial whether he has such knowledge or not.

A. I may have read the reports, but never made any note of them or kept any record of them.

Q. 56. You were asked on cross-examination who made up these reports. I believe you said substantially the brokers dealing in the stock. How do they come to make up this value?

A. By visiting around the various prospective purchasers.

Q. 57. You have been asked if you had any information from the newspapers. I will call your attention to the official publication of defendant bank under date of May 21, 1897, and ask you if that furnished any information to the public, and if so what it was, giving the amount advertised as capital stock, surplus fund and undivided profits and the date of the paper.

To which question plaintiff objected on the ground that the question calls upon the witness to read a statement from a newspaper that he has before him, called the Cleveland Leader.

A. I find published in the Cleveland Leader May 21, 1897, a statement purporting to be sworn to by Charles L. Murfey, cashier of the Mercantile national bank giving the capital stock paid in $1,000,000, surplus fund $200,000, undivided profits less expenses and taxes paid $89,413.87.

Q. 58. Now as a broker you were asked what means or information you had to determine what the intrinsic value of the stock
413 was. If that published affidavit which you have just read be true, would you say that a million dollars' worth of stock having that amount of surplus and undivided profits was worth at that time in the market below or above par?

To which question plaintiff objected on the ground that it asks for an opinion from the witness without his having shown any qualification to answer.

A. About par.

Q. 59. Assuming that the bank paid the taxes, what would that stock be worth on the market, it being already deducted out of that surplus and undivided profits?

To which question plaintiff objected on the ground that the bank never paid the tax except as the agent of respective shares.

A. Between 128 and 129.

Q. 60. How do you fix that value to that sworn statement?

A. From the accumulated surplus and undivided profits added to the capital stock.

Q. 61. Do you know a publication named the "Financial Review" published in this city?

A. Yes.

Q. 62. How is that published? How are the affidavits and reports of banks in there, obtained, if you know?

To which question plaintiff objected on the ground that it must be hearsay.

A. I don't know how they are obtained.

Q. 63. Are they in general circulation in Cuyahoga county?

A. Yes.

Q. 64. Were they at that time?

A. Yes.

Q. 65. I will call your attention to a report of the Mercantile national bank May 20, 1897, on page 12, sworn to by C. L. Murfey, being the same publication that has been heretofore offered in evidence, and state what the stock, surplus and undivided profits were reported at that time and in that publication.

To which question plaintiff objected on the ground that the publication itself is the best evidence.

A. I find published in the Financial Review of June, 1897, an affidavit purporting to be sworn to by C. L. Murfey, cashier on May 20, 1897, giving the capital stock paid in as $1,000,000, surplus fund $200,000, undivided profits less expenses and taxes paid $89,413.87.

Q. 66. That's the same as the one you have just given, and the same date?

414 A. Yes.

Plaintiff moves to strike out the answer on the ground that it was the mere reading of what on a former occasion had been read from the same pamphlet by other witnesses upon cross-examination by the attorney general of the State.

Q. 67. What would be the value of a share of stock under the date you have just given from the Financial Review report?

To which question plaintiff objected because the witness shows incompetency to answer.

A. 128 to 129.

Q. 68. I will call your attention to the National Bank of Commerce and ask you if you had published reports to go by to determine its value, purporting to be signed by the members or officers of the bank, and if so state what—similar to the publication you have just given in the above bank.

To which question plaintiff objected on the ground that the papers before the witness do not purport to have been signed by the cashier of the bank, but they are merely printed copies of another document which is not laid before the witness to enable him to de-

termine whether the signature to the document was the signature of the cashier.

A. I find a similar report on the National Bank of Commerce published in the Cleveland Leader May 21, 1897, purporting to be sworn to by F. E. Rittman, cashier, giving the capital stock paid in as $1,500,000, surplus fund $300,000 and undivided profits less expenses and taxes paid $71,837.17.

Q. 69. Was there a similar publication in the Financial Review?

Same objection by plaintiff.

A. I find a similar publication in the Financial Review, sworn to under date of May 20, 1897.

Q. 70. Basing your judgment as a broker upon the data there published if that be true, what was the market value of that stock on that date from that data?

To which question plaintiff objected.

A. I would say between 135 and 140.

Q. 71. You may explain how you determine that that would be the value of the stock. What is the method of computation?

A. Their surplus fund and undivided profits amounted to about 40 per cent over and above their capital. I made a mistake in calculating that. I would like to correct my former answer to
415 read 124 to 130 instead of what I have said. It was 24 to 30 per cent. above the surplus and undivided profits.

Q. 72. I call your attention to the Commercial national bank. Have you a similar report?

A. The Cleveland Leader May 21, 1897, has a report purporting to be sworn to by William P. Johnson, cashier, under date of May 20, 1897, giving the capital stock paid in $1,500,000, surplus fund $500,000, undivided profits less expenses and taxes paid $6,702.07. The same publication appears in the Financial Review of June under the date of May 20.

Plaintiff objected to witness' statement of contents of papers and magazines.

Q. 73. What would be the value of the stock of that bank in Cuyahoga county on those dates with that data?

Same objection.

A. 130 to 135.

Q. 74. Can you give similar data of the Central national bank? If so, give the same.

To which question plaintiff objected on the ground that witness is reading from a newspaper which the master is supposed to be able to read himself.

A. I find published in the Cleveland Leader of May 2, 1897, the statement of the Central national bank purporting to be sworn to by J. J. Sullivan, cashier, under date of May 20, 1897, giving the capital

stock paid in as $800,000, surplus fund $135,000, undivided profits less expenses and taxes paid $42,594.33.

To which answer plaintiff objected on the ground that he is reading from a copy of the Cleveland Leader.

A. (cont.) I find similar data in the Financial Review purporting to be sworn to by J. J. Sullivan, cashier, May 20, 1897.

Same objection as to the Financial Review.

Q. 75. What, from the data that was furnished by the published publication, was the value of the stock?

A. A little over 120 per share.

Q. 76. Have you similar data as to the National City bank? If so, you may give the same.

To which plaintiff objected on the grounds previously stated.

A. I find published in the Financial Review of June, 1897, a statement purporting to be sworn to by E. R. Date, cashier, of the National City bank, giving the capital stock paid in $250,000, surplus fund $150,000, undivided profits less expenses and taxes paid $146,483.45. I do not find that in the Leader. I would say it was worth about 178 to 179.

416 Q. 77. Have you similar data as to the Western Reserve national bank? If so, you may give us that.

Same objection as previously stated.

A. I find in the Cleveland Leader under date of May 20, 1897, this report of the condition of the Western Reserve national bank, purporting to be signed by G. S. Russell, cashier, and dated May 20, 1897, giving the capital stock paid in as $1,000,000, surplus fund $125,000, undivided profits less expenses and taxes paid $17,176.91. I find a similar report published in the Financial Review of June, 1897, also purporting to be sworn to by G. S. Russell, cashier, under date of May 20, 1897.

Q. 78. Now give the information what would the stock be worth in the market on that date?

Objected to.

A. 125 to 130.

Q. 79. Have you a similar publication as to the First national bank? If so, give it?

To which question plaintiff objected on the ground that witness still reads from a newspaper and from the Financial Review, which the master is supposed to be able to read himself.

A. I find published in the Cleveland Leader, May 21, 1897, a report of the condition of the First national bank purporting to be sworn to by Thomas H. Wilson, cashier, May 20, 1897, giving the capital stock paid in as $500,000, surplus fund $100,000, undivided profits less expenses and taxes paid $8,412.77, and I find a similar report published in the Financial Review of June, 1897.

Q. 80. With that data furnished by the banks in their publication,

what would you say the market value of a share of stock would be on or about May 20, 1897?

Same objection.

A. 121 to 122.

Q. 81. Have you similar data as to the Cleveland national bank? If so, give it.

To which question plaintiff objected on the grounds previously stated.

A. I find published in the Financial Review of June, 1897, a report of the condition of the Cleveland national bank, purporting to be sworn to by T. W. Hill, cashier, under date of May 20, 1897, giving the capital stock paid in as $500,000, surplus fund $100,000, undivided profits less expenses and taxes paid $13,341.78. I do not find any publication in the Leader of that.

Q. 82. On that data furnished by the banks under oath to the public, what would the value in the public market be of that stock at that time?

417 A. A little over 122.

Q. 83. I will ask you now was that its market value at that time?

A. Its condition would justify that value.

Q. 84. If that is true that they have sworn to, that would be its market value—if that data that they have sworn to is true, that would be its market value by your standard in the city as brokers?

A. Yes.

Q. 85. Have you similar data as to the State national bank? If so, you may give it.

To which question plaintiff objected on the grounds previously stated.

A. I find published in the Cleveland Leader May 21, 1897, a report of the condition of the State national bank purporting to be sworn to by Horace R. Sanborn, cashier, May 20, 1897, giving the capital stock paid in as $500,000, surplus fund $100,000, undivided profits less expenses and taxes paid $19,462.69, and I find a similar report published in the Financial Review of June 1897, and sworn to May 20, 1897, by Horace R. Sanborn, cashier.

Q. 86. With the data there furnished, assuming that to be true, what would the market value of the stock be worth on that day in Cuyahoga county? Would be the market value of it?

To which question plaintiff objected on the grounds previously stated.

A. About 120.

Q. 87. Have you similar data as to the Union national bank? If so, you may give it.

A. I find published in the Cleveland Leader, May 21, 1897, the report of the condition of the Union national bank purporting to be sworn to by E. H. Bourne, cashier, under date of May 20, 1897,

giving the capital stock paid in as $1,000,000, surplus fund $200,000, undivided profits less expenses and taxes paid $46,982.95, and I find a similar report in the Financial Review purporting to be sworn to by E. H. Bourne, cashier, under date of May 20, 1897.

Q. 88. From that data what was the stock worth on the market in Cuyahoga county at that time?

To which question plaintiff objected on the grounds previously stated.

A. 124 to 125.

Q. 89. Have you similar data as to the Park national bank? If so, you may give it.

To which question plaintiff objected on the grounds previously stated.

418 A. I find published in the Financial Review of June 1897, a report of the condition of the Park national bank of Cleveland, purporting to be sworn to by John Sherwin, cashier, under date of May 21, 1897, giving the capital stock paid in as $500,000 surplus fund $25,000, undivided profits less expenses and taxes paid $17,081.39.

Q. 90. On the data there furnished and held out by said bank under its oath or the oath of its officers, what would be the value in the market of that stock?

Same objection.

A. Between 108 and 110.

Q. 91. Have you similar data as to the Euclid Avenue national bank? If so, you may give it.

Same objection as previously stated.

A. I find published in the Cleveland Leader May 21, 1897, a report of the condition of the Euclid Avenue national bank purporting to be sworn to by C. E. Farnsworth, cashier, under date of May 19, 1897, giving the capital stock paid in as $500,000 surplus fund $150,000, undivided profits less expenses and taxes paid $65,221.46. I find a similar report in the Financial Review also purporting to be sworn to by C. E. Farnsworth, cashier.

Q. 92. What is the market value?

A. 141.

It is agreed that the Leader just read from is of the official files of the auditor of Cuyahoga county as required by section 895 of the Revised Statutes of Ohio.

Whereupon the further hearing of these depositions was adjourned until November 10, 1898, at 9 o'clock a. m.

Defense.

NOVEMBER 10, 1898—9 a. m.

Parties met pursuant to adjournment and resumed the taking of depositions.

Present: Hon. W. W. Boynton, counsel for complainant. F. S. Monnett, Smith W. Bennett and P. H. Kaiser, for defendant.

The examination of PETER FAHEY resumed.

Recross-examination of PETER FAHEY.

By Judge BOYNTON:

Q. 92. In giving the foregoing values in your redirect ex-
419 amination of shares of the respective banks, I notice that you add the capital, surplus and undivided profits together, and divided the same by the capital of the bank. Is that true?

To which question defendant objected on the ground that witness has given values of the stocks from two hypotheses, the latter on re-examination was in answer to cross-examination as to whether he had any means of ascertaining the values other than rumor, and the question is ambiguous so that it cannot be answered.

A. As I understand it I only added the surplus and undivided profits, and divided it by the capital.

Q. 93. You divided the surplus and undivided profits by the capital of the bank?

A. Yes.

Q. 94. And from that you deducted the value of the shares as given by you?

A. In that way I deducted the premium of the shares over par, which I added to the par value to make the actual value, as I understood it.

Q. 95. Suppose the capital of the bank had been impaired by bad investments, or that the surplus and undivided profits had been largely diminished from what they were stated to be by bad investments, would you then say that the value fixed by you to the shares would be correspondingly diminished?

To which question defendant objected.

A. Yes.

Q. 96. I think you stated in your examination that you had no knowledge of the actual condition of the finances of any of the banks?

A. I have none, no, sir; except what I read in the public papers.

Q. 97. You have no personal knowledge?

A. No personal knowledge, no, sir.

Redirect examination of PETER FAHEY.

By Mr. MONNETT:

Q. 97. Your attention has been called to the matter of losses of the plaintiff banks in your recross-examination. I ask you now whether as such a dealer in bank stocks or as a broker you have any means of taking that into consideration in determining what was testified to yesterday. If so what have you?

To which question plaintiff objected.

A. I have nothing except that I was under the impression that all banks charged off such losses about once a year or some
420 stated time, and I presume that in the report read yesterday such losses had been accounted for. But I have no positive knowledge of it.

Q. 98. If the reports sworn to that you examined yesterday on the dates therein referred to by the cashiers of the banks were true, that helped to determine the market value or the real value so far as the public was concerned, upon which you based your testimony?

A. Yes.

Q. 99. If they were false, there might be a higher or a lower value on those stocks?

A. Decidedly so.

G. N. CALVERT, a witness produced in behalf of said defendant, being duly sworn, deposes and says as follows:

Direct examination of G. N. CALVERT.

By Mr. MONNETT:

Q. 1. Please state your name and place of residence.

A. Gerald North Calvert. I reside in Cleveland.

Q. 2. How long have you resided here?

A. 3 years.

Q. 3. What was your business in the last ten years?

A. That of accounts, chiefly as an accountant.

Q. 4. What training had you in the way of an accountant?

A. Five years articleship to a firm of chartered accountants in London, whose business is the investigation of the accounts of corporations, banks and railroads, to determine the value of their stock and also to testify to the correctness of their accounts.

Q. 5. When did you come to this country? How long have you been here?

A. Six years.

Q. 6. Have you had any business in your line as you have stated as an accountant in stocks and bonds in the city of Cleveland? Have you had occasion to report on the stock values of the banks of the city of Cleveland?

A. Nothing beyond my position as a broker.

Q. 7. How long have you been a broker in this city?

A. About fifteen months—that is known as a broker in this city.

Q. 8. Prior to that time did you have any information as a broker outside of being connected with the present firm?

A. Yes, connected financially.

Q. 9. Have you had experience as a broker?

421 A. Yes, on certain occasions.

Q. 10. Can you tell me as such broker how you would determine the actual value or market value of the defendant bank's shares of stock? Give all the data you would use from their official statements or from their books or from the buying and selling on exchange, or what data you would take into consideration, giving it as fully as you can determine the true value in money of such stocks?

To which question plaintiff objected as being so much involved that it is difficult to understand it.

A. In determining the value, the market value or the actual value, I would take the surplus fund and the undivided profits, less all expenses and I would total it, and the percentage of that above the capital stock I would add to the par value of the stock.

Q. 11. Do you use any other data than this published report to determine the actual value of stocks on the market?

To which question plaintiff objected.

A. Yes, as the value of the market price of stock is reflected a great deal by the demand of the stock and the principal people who are interested in the stocks who might take the stock actually. At the same time there is sympathy attached to the market, and the demand for a stock will raise its price. Where a stock lies quiet, it will depreciate, but never except in a very few instances below the price that is determined by official records.

Q. 12. And that is based upon the surplus and profit to determine how much above par the respective banks are?

A. An evil report will depreciate stock.

Q. 13. Assuming that there is no evil report, and taking the officially published reports before you as true, under the date of May 21, 1897, being a part of the conceded official files of the county auditor, what would you say the value of the shares of stock of the plaintiff, The Mercantile National Bank was on or about that date?

To which question plaintiff objected because it is not a question for an expert.

A. I find on May 21, 1897, Mercantile National Bank report, purporting to be sworn to by Mr. Murfey, capital stock paid in one million dollars, surplus fund $200,000, and undivided profits less expenses and taxes paid $89,413.87.

Q. 14. You said there was an actual value and a market value, give the actual value and the probable market value.

422 A. The actual value determined from that statement would be between 128 and 129.

Q. 15. Can there be a higher or lower market value than that? And if so, what would enter into the market value?

A. Certainly. The market value might be reflected upon partly by the good will of the bank, or to a large extent by that, and might still be higher than that actually determined by the books.

Q. 16. Take up the National Bank of Commerce and state whether you have similar data as to that.

To which question — objected because it is not a question for an expert.

A. May 21, 1897, I find capital stock paid in $1,500,000, surplus fund $300,000, undivided profits less expenses and taxes paid $71,837.17. These are purported to be sworn to by F. E. Rittman, cashier. The value of the stock as shown by these figures would be about 137 to 138.

Q. 17. Can there be a speculative market value higher than that?

To which question plaintiff objected on the ground previously stated.

A. Yes, depending very largely on the good will of the bank and reflecting on the securities and other things reported to be held by them.

Q. 18. In assuming that value to be true, and there being no financial rumors against the bank, what would you say the actual value was of these shares at that time?

A. As I have given it.

Q. 19. Now, take up the Commercial national bank in the same manner and state whether you have similar data as to it?

To which question plaintiff objected on the ground previously stated.

A. May 21, 1897, I find the capital stock paid in $1,500,000, surplus fund $500,000, undivided profits less expenses and taxes paid $6,702.07, purporting to be sworn to by W. P. Johnson, cashier. The value would be about 133 to 134.

Q. 20. Adopting that method of making your calculations, please make a schedule of what would be the market values of all the 12 banks involved in this litigation?

A. I will do so.

Said schedule furnished by the witness is as follows, to wit:

	Mercantile national	128-9
	National Bank of Commerce	125
423	Commercial national	133-4
	Central national	122-3
	National City	216-0
	Western Reserve	114-5
	First national	121-2
	Cleveland national	122-3
	State national	123-4
	Union national	124-5
	Park national	108-50
	Euclid national	143-4

Cross-examination of G. N. CALVERT.

By Judge BOYNTON:

Q. 21. You have no personal knowledge of the character of the paper that either of these banks held in the months of April or May, 1897?

To which question defendant objected.

A. No.

Q. 22. Is the actual value of shares of stock in a bank affected by the character of its paper? That is, if a portion of its paper is worthless, uncollectible, would that diminish the value of the shares from what it would be if that paper was all good and collectible?

Objected to.

A. Yes.

Q. 23. Do you know whether or not the report made by either banks to which your attention has been called, to the Comptroller of the Currency, excluded therefrom any bad or uncollectible paper which the bank at that time owned?

Same objection.

A. I don't know.

Q. 24. Do you know whether or not the report made to the Comptroller of the Currency of the resources of the bank included all that appeared to be resources upon their books, without regard to whether more or less of them were uncollectible?

Same objection.

A. I don't know.

Q. 25. In making the estimate you have made of the actual value of the shares of stock of the respective banks, were you, or were you not guided wholly by the report, by what appears to have been a report of the banks to the Comptroller of the Currency laid before you in the form of newspaper publications?

Same objection.

A. My figures were gathered from the reports before me now, the actual reports.

424 Q. 26. And from that report and those figures you made the judgment you gave as to the value of the shares?

Same objection.

A. Yes.

Q. 27. What do you mean by the expression "actual reports" in your former answer?

Same objection.

A. I mean the reports placed before me and reported as official reports as published in the newspapers.

Q. 28. Do you not know the difference, being an expert, between the actual report made to the Comptroller of the Currency and filed

in Washington, and the publication of that report in the newspapers of this city?

To which question defendant objected as impertinent.

A. If there is a difference, I have to answer that somewhat ambiguously—if I answer and say I believe this report to be true because it is published as such I would expect the Washington report to be the same. On the other hand it is to the advantage of the banks, their local business, to publish a report here which in substance may be perfectly true and yet may not tally with that at Washington, what you might call "Chinese copy." These things I am not aware of inasmuch as I don't do my business in Washington.

Q. 29. You don't seem to catch the point of my question. In the former answer you made, you spoke of an "actual report" made by the banks to the Comptroller of the Currency, as if you had that actual report before you. I now ask you again if you do not know the difference between the actual report signed by the officers of the bank and filed with the Comptroller of the Currency and publication of that report in a newspaper or in a financial magazine. The question is whether you know the difference, or whether you regard the two as the same.

To which question defendant objected.

A. No, I don't regard the two as the same.

Q. 30. What did you mean in your former answer by referring to the "actual report" made to the Comptroller of the Currency by the bank?

Same objection.

A. In my former answer I stated my figures from the report placed before me.

Q. 31. And that is a newspaper report?

Same objection.

A. Yes.

Q. 32. And that is the report you wish to be understood as referring to when you said "actual report"?

425 Same objection.

A. Certainly.

Redirect examination of G. N. CALVERT.

By Mr. MONNETT:

Q. 33. Your attention has been called as to the mode of bookkeeping as reported in the official reports under May 21, 1897, questioning your use of the terms "resources," "surplus fund" and "undivided profits." What do these terms mean as used in bookkeeping? Does that mean that surplus includes worthless paper and bad debts, or actual valuable assets?

A. It should not. Surplus should include unquestionable assets.

Q. 34. How about undivided profits?

A. Undivided profits are an actual asset.

Q. 35. So that this imaginary bad paper, if the terms are used accurately as book-keepers should use them, should be actual assets without any worthless accounts?

A. It should be written off.

Q. 36. Assuming that each of such reports exhibited in detail and under appropriate heads the resources and liabilities of these banks at the close of business on the day which it is specified, what would you say as to your answer heretofore being correct or not on the actual value of such stocks?

A. Do I understand you to mean in looking at the statement made would I still adhere to my former statement and the price determined?

Q. 37. Yes, assuming that they were used in the sense in which ordinary book-keepers use them?

A. Yes, I should still determine them in the same way.

Q. 38. And that is true of each of the banks you have just testified to?

A. Yes.

Recross-examination of G. N. CALVERT.

By Judge BOYNTON:

Q. 39. Have you ever been in a bank in any official capacity—cashier, teller, book-keeper or otherwise?

A. No, sir.

Q. 40. Do you know from personal knowledge whether banks carry along from month to month and sometimes more than a year, paper on their books represented in their resources—doubtful in character—before the same is charged off?

A. Yes.

Q. 41. That's done frequently, is it not?

426 A. Yes, that's done. That's why I was anxious to spread out—not being asked to determine the value of these things and doing this from the standpoint of an accountant. In doing these things there is to be taken into consideration to a large extent the stocks and securities and the banking-house furniture and fixtures and real estate and mortgages owned. These things are apt to fluctuate immensely, and in answer to my last question it is a well-known fact that banks carry paper from time to time, probably they may take a certain percentage off of its value, but they will carry it before they will strike it off as a bad debt?

Redirect examination of G. N. CALVERT.

By Mr. MONNETT:

Q. 42. If they earned 10 per cent. in six months and they had bad paper, they would only declare a dividend of 6 per cent. for that paper and use the other?

A. By rights they should keep a profit and loss fund, what in manufacturing terms is called a depreciation account.

Q. 43. So that the surplus is not an accumulation of any bad debt, but as it appears in the profit and loss account.

A. I should read surplus as being the surplus of the bank at that time unquestionably. You see there is no other account, there is no contingent account. I think they put their contingent account into their surplus again and call it surplus.

Q. 44. If they paid year in and year out 6 per cent. dividend, or 3 per cent. semi-annually, then out of what fund would they likely be charging off their bad debts?

A. Out of probably the surplus of their former profits. The bank may this year make 10 per cent., it may only declare it has charged off 4 per cent. to meet contingencies.

Q. 45. So there would be 6 per cent. taken out of the surplus, and 4 per cent. taken out of the surplus for dividends, and leave the actual surplus?

A. Yes.

Q. 46. That surplus should show what is left after they paid the dividends and paid out any contingencies, should it not?

A. If they actually paid them out it would not appear in the surplus. They might still hold paper in the surplus which in the next year would be worth nothing.

Q. 47. And they might have some which would be worth more than par?

427 A. Yes, but if it was paper upon which they had loaned money, and they held it above par, that would be a question of speculation of the bank and not a question of actual value.

S. C. HALE, a witness produced in behalf of said defendant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. MONNETT:

Q. 1. Please state your name and business.

A. S. C. Hale; I am a reporter on the Leader for the most part.

Q. 2. As a reporter what is your special department?

A. Commerce and finance.

Q. 3. As commercial and financial reporter did you have anything to do with gathering the official Federal reports of the national banks, or the statements of the national banks of Cuyahoga county, or of Cleveland on or about May 21, 1897?

A. I had nothing to do with that part. That was furnished by the banks themselves.

Q. 4. I will call your attention to that part of the financial publications of May 21, 1897, headed "National bank statement," and ask you as a reporter of the Leader who furnished this to the Leader?

A. They were furnished by the banks themselves.

Q. 5. These are the same reports that have just been used by the witnesses preceding you on the stand, Calvert and Fahey?

To which question plaintiff objected on the ground that counsel is instructing the witness what to say.

A. Yes.

Q. 6. Is this the official files of the Leader as left with the county commissioner and left with the county auditor of Cuyahoga county?

A. Yes, to the best of my knowledge.

Q. 7. I exhibit to you a publication known as the Financial Review, or the official returns of all banks of the city of Cleveland, purporting to be a publication of these same reports of the condition of the plaintiff banks on the same date. Do you know anything about this publication?

A. No, sir, I don't. Not definitely. I understand they are taken from the reports we have in the paper.

By Judge BOYNTON: I move the court to strike the answer out after the words "I understand."

428 Q. 8. There are in the same edition made before and after the official publications you have just testified to, columns of reports of the financial standings of the banks, and stock values of the shares of said banks. Have you anything to do with gathering that information, and if so, what?

A. Yes.

Q. 9. How do you ascertain these values as appear published on May 15th and 16th just preceding this report, and on the Saturday immediately following this said report?

A. We furnish these as the best information we can get in regard to the value of the stock in the market.

Q. 10. On May 16, 1897, there is on page 27 of that edition of the Leader a publication of the plaintiff banks' stock shares. Did you have anything to do with gathering that?

A. Yes.

Q. 11. I will call your attention to the first one, the Central national bank, marked "par 100, last dividend 3 per cent., bid 130, asked 131." You may state whether that represents the market value on that date.

To which plaintiff objected on the ground of want of knowledge of the witness as to the market value of stock on those days.

A. Yes, to the best of my knowledge it does.

Q. 12. I notice a similar report of The Cleveland National Bank, a plaintiff bank, "par value 100, last dividend 3 per cent., bid 118, asked 120." Does that represent the market value of that date?

To which question plaintiff objected on the grounds previously stated.

A. Yes.

Q. 13. I notice a similar report prepared by you for The Commercial National Bank, one of the plaintiff banks. "Par 100, last dividend 3 per cent., amount bid 123, asked 125." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the grounds previously stated.

A. Yes.

Q. 14. I call your attention to a similar report of The Euclid Avenue National Bank, one of the plaintiff banks. "Par 100, last dividend 3½ per cent., bid 145, asked 147." I ask you if that is substantially the market — of that plaintiff bank on that date?

To which question plaintiff objected on the ground previously stated.

429 A. Yes, to the best of my knowledge.

Q. 15. I notice a similar report prepared by you for The First National Bank, one of the plaintiff banks. "Par 100, last dividend 3 per cent. dividend, bid 123, asked 125." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes, to the best of my knowledge.

Q. 16. I notice a similar report prepared by you for The Mercantile National Bank, one of the plaintiff banks. "Par value 100, last dividend 3 per cent., amount bid 132, asked 135." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes, to the best of my knowledge.

Q. 17. I notice a similar report prepared by you for The National Bank of Commerce, one of the plaintiff banks. "Par 100, last dividend 3 per cent., amount bid 132, asked 135." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 18. I notice a similar report prepared by you for The National City Bank, one of the plaintiff banks. "Par value 100, last dividend 2 per cent., amount bid 190, asked 205," with a star marked "quarterly dividend." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes, they pay quarterly dividends and the others semi-annually.

Q. 19. I ask you if that is the true market value on that date of that stock?

A. Yes.

Q. 20. I notice a similar report prepared by you for The Park National Bank, one of the plaintiff banks. "Par value 100, last divi-

dend 3 per cent., bid 124, asked 125." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes, to the best of my knowledge.

Q. 21. I notice a similar report prepared by you for The
430 State National Bank, one of the plaintiff banks. "Par 100, last dividend 3 per cent., bid 120, asked 121." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 22. I notice a similar report prepared by you for The Cleveland National Bank, one of the plaintiff banks. "Par 100, last dividend 3 per cent., amount bid 126, asked 128." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 23. I notice a similar report prepared by you for The Western Reserve National Bank, one of the plaintiff banks. "Par 100, last dividend 3 per cent., amount bid 128, asked 129." I ask you if that is the market value of that date for that bank stock?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 24. I call your attention to the report under date of May 22nd, 1897, in which you have prepared, under the head of local stocks and bonds, the following quotations for the same as near as can be ascertained by a careful canvas- of the market. Did you prepare that list?

A. Yes.

Q. 25. The list reads as follows: "National banks: Central 100 par, last dividend 3 per cent., bid 130, asked 131." Was that the actual value of the stocks on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes, to the best of my knowledge.

Q. 26. The Cleveland national bank, under date of May 22nd, 1897. "Par value 100, last dividend 3 per cent., bid 118, asked 120." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

Q. 27. The Commercial national bank. "100 par, 3 per cent.

interest, bid 124, asked 126." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground above stated.

A. Yes.

431 Q. 28. The Euclid Avenue national bank. "Par 100, dividend 3½, bid 146, asked 148." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 29. The First national bank. "100 par, 3 per cent. dividend, 123 bid, 125 asked." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 30. The Mercantile national bank. "100 par, 3 per cent. dividend, 133 bid, 135 asked." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 31. The National Bank of Commerce, "100 cents par, 3 per cent. dividend, bid 132, asked 135." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 32. The National City bank, "100 par, 2 per cent. quarterly dividend, 190 bid, 205 asked." I ask you if that was that market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 33. The Park national bank, "100 par, 3 per cent. last dividend, 122.50 bid, asked 123.50." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 34. The State national bank, "100 par, last dividend 3 per cent., bid 120, asked 121." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 35. The Union national bank, "100 par, last dividend 3 per cent., bid 126, asked 126." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes.

432 Q. 36. Western Reserve national bank. "100 cents par, 3 per cent. dividend, bid 128, asked 129." I ask you if that was the market value of that stock on that date?

To which question plaintiff objected on the ground previously stated.

A. Yes, that's the market price.

Q. 37. Now turn to reports six months later. I notice there was prepared on September 19th, six months after this date, quotations for local stocks in the city of Cleveland under said date of the same plaintiff banks. Did you familiarize yourself with the files at that time, and are these true?

A. Yes, to the best of my knowledge.

Q. 38. The plaintiff banks, according to that report, paid the same dividend in the next six months, and the stock values are substantially the same as you have just testified?

To which question plaintiff objected on the ground previously stated.

A. Yes.

Q. 39. Was that true?

To which question plaintiff objected on the ground previously stated.

A. That report is true in regard to the values as I have stated.

Q. 40. You may state to the court what data, including your conversations with any officers of the banks or from their published reports that you used, in making these reports.

To which question plaintiff objected until notified who these officers were and what banks they represented.

A. I had no conversations with any officers of the banks. My information came largely from stock brokers who handled these stocks, as to the prices they are offered and sold at. I get the market value from what parties bid and what is asked. The asked price is generally the one which the holder of the stock asks, and the bid price is what is offered by some party who wishes to buy.

Q. 41. What is the actual value of stock where it pays a uniform dividend of three per cent. semi-annually in the market?

To which question plaintiff objected on the ground that witness has not shown himself competent to answer the question.

A. I could not say as to that.

Q. 42. Does the value of plaintiff's bank stock depend upon the regularity of dividends, or upon the surplus and undivided profits?

A. Yes, very materially.

433 Q. 43. As to any of these said stocks of plaintiff's banks, have you as a reporter been notified that they are too high by the banks, and that is not their actual value?

A. No, sir.

Q. 44. Have you been told by the plaintiff banks or their officers that their official published reports are untrue?

A. No, sir.

Q. 45. Did they ever complain about these published quotations to you in any way?

A. Now and then there has been criticism.

Q. 46. Too high or too low?

A. Sometimes too high and sometimes too low.

Q. 47. Can you give any instances of that of any particular bank?

To which question plaintiff objected.

A. I think the Cleveland national criticised me once in regard to their quotation being too low.

Q. 48. When? During the year 1897?

A. Yes, I think it was.

Q. 49. Who did that?

A. The cashier, Mr. T. W. Hill.

Q. 50. He claimed that your quotations were too low?

A. Yes.

Q. 51. What was that conversation, if you can give it?

To which question plaintiff objected.

A. I don't recollect. He claimed it was too low as compared with other bank stock. I asserted my belief that we were putting it about right; that that was the price that was bid; that that's all it was bringing in the market.

Q. 52. Were there any other banks being reported by you complaining of being quoted too low?

A. None that I recollect.

Q. 53. None complained about being too low?

A. No, sir.

Q. 64. Can you tell as such reporter of bank stocks whether there is any element of value placed upon their official reports as to surplus and undivided profits?

A. It is very largely placed upon the official reports as to value of surplus and undivided profits.

Q. 55. They have always been held out by the banks as the actual condition of their banks?

A. Yes, they are reliable.

Q. 56. And the dividends have corresponded with that report for the last five years?

A. Yes, to my knowledge.

Q. 57. And are still corresponding?

434 A. Yes, the same dividends.

Q. 58. Is there a difference between the market value and the actual value, and if so, what makes it?

To which question plaintiff objected.

A. The difference between that depends on whether the buyers want that particular stock and are willing to bid what they consider the actual value.

Q. 59. But market value is substantially what it is considered from one day to the other?

Objected to.

A. Yes.

Cross-examination of S. C. HALE.

By Judge BOYNTON:

Q. 60. If I understood you correctly, you obtained your information of the values of the shares of stock of the respective banks from the inquiries made of brokers?

A. Yes.

Q. 61. And if a particular individual is willing to pay $25 premium for a share of stock, and a broker so advised you and he does not obtain the stock, you put in your papers that bids for the stock of that bank are 125?

A. Yes.

Q. 62. And if the owner of 100 shares of stock should offer it in the market at 125 and should not be able to obtain it, you would put it down "asked 125"?

A. We generally put it down as bid and asked. The bid price is what some buyer offers to pay for certain bank stocks.

Q. 63. Some particular buyer?

A. Any buyer.

Q. 64. Suppose, Mr. Hale, that half of the stock of the Mercantile national bank should be thrown into the market tomorrow, how would that affect its market value?

A. It would decrease its value.

Q. 65. If all of the shares of the stock should be offered for sale in the market, how would that affect its value?

To which question defendant objected.

A. It would decrease its value. There would be a lack of confidence as to what the stock is worth and buyers would not be as willing to purchase as if there was not that much offered.

Q. 66. Isn't it a fact that there are persons who have money who wish to make of it a permanent investment, that are willing to pay more than the real value of stock in order to obtain that investment?

435 A. Yes, sometimes.

Q. 67. Isn't it true that because of the permanent character of bank stocks that they command sometimes in the market more

than their actual value, judging from the dividend-paying capacity of the bank?

A. Yes.

Q. 68. You said—if I took you down correctly—that the reports of the value of the shares of the stock of the various banks published in your paper were made from the reports of the banks to the Comptroller of the Currency?

A. Yes.

Q. 69. Assuming that the reports of the resources and liabilities of the bank to the Comptroller of the Currency represent in all cases the actual valuable assets?

A. Yes.

Q. 70. So that if a bank returns its capital at a million dollars, and its resources at $1,300,000 and makes no deduction from its resources of any bad debts, the apparent value of the assets determines very largely the value of the shares of stock?

To which question defendant objected.

A. Yes.

Q. 71. You have no knowledge I suppose, Mr. Hale, upon the point of the banks' return to the Comptroller of the Currency in fact representing what appears on their books to be assets?

A. No, sir, I am not a bank examiner. I don't know in regard to the value of any investments it may have of other funds.

Q. 72. If it was known by the purchasers of stock of bank shares that the bank whose capitalization and surplus were published at $1,300,000 was in fact worth only one million, how would that affect the market value of the shares?

A. It would increase it.

Q. 73. Correspondingly to the amount of bad debts?

A. Yes, to the amount of bad debts.

Redirect examination of S. C. HALE.

By Mr. MONNETT:

Q. 74. That is, if an admission is made that they were holding out a false statement to the public of $300,000, in that particular bank, you mean to say that the stockholders and managers of that bank would, notwithstanding they knew that—would it induce them to sell much quicker?

436 A. If it was generally known that they were holding assets of that kind, a buyer would not be willing to buy.

Q. 75. But the seller would be willing to sell rapidly?

A. Yes.

Q. 76. That's the reason you say that the market value and the actual value are substantially the same under ordinary circumstances? If a loss had occurred, a stockholder owning stock in such bank, would, of course, sell more rapidly than if the loss had not occurred?

A. Yes.

Q. 77. And in order to sell he would have to reduce the price?

A. Yes, offer a better inducement.

Q. 78. And none of these things occurred to affect the value of these plaintiff banks during 1897?

A. Nothing discreditable to the banks.

Q. 79. During that whole year that is now closed and gone nothing of that kind happened and they paid their dividends regularly?

A. Yes.

Q. 80. And were protected by the officers of the State and county and city and police power under that valuation?

To which question plaintiff objected as ridiculous and nonsensical.

A. Yes.

Recross-examination of S. C. HALE.

By Judge BOYNTON:

Q. 81. You don't mean to say that the banks of the city or some banks of the city in 1897 were not overtaken with a lot of bad paper?

A. No, sir, I don't undertake to say that.

Q. 82. Or that paper suddenly turned out to be bad?

To which question defendant objected because no bank is specified.

A. No, sir.

Q. 83. But certain banks of the city might have had very much poor paper without your knowledge?

A. Yes.

Q. 84. You weren't in the habit of going to the banks to ascertain how much good or bad paper they had?

A. No. It is none of my business. I am not a bank examiner.

Q. 85. Whether or not the column in the report to the Comptroller of the Currency representing resources, represented the actual value, you don't know?

A. No, sir.

437 Redirect examination of S. C. HALE.

By Mr. MONNETT:

Q. 86. None of these imaginary banks with that imaginary bad paper rushed into the market to dispose of it on that theory?

A. No, sir.

Q. 87. Nor did the stockholders of such banks?

A. No, sir, not that I know of.

Q. 88. Did the directors or officers of such banks dispose of their stock at a greatly reduced price?

A. No, sir, very little stock of national banks was in the market in 1897?

Q. 89. It was held just as firm as ever?

A. Yes.

FRANK J. SMITH, a witness produced in behalf of said defendant, being duly sworn, deposes and says as follows:

Direct examination.

By Mr. MONNETT:

Q. 1. You may state your name, residence and business.

A. F. J. Smith. I am with Lamprecht Bros., in the capacity of a broker.

Q. 2. What are the duties of a broker in the city of Cleveland and what have they been for the last three years?

A. To sell stock.

Q. 3. How long have you been such broker?

A. About five years.

Q. 4. As such broker give generally what you are required to do to ascertain the value of stock, and what you have to do with bank stock?

To which question plaintiff objected.

A. If a man has any bank stock, he notifies me that he has so many shares, and I go and see if I can sell it.

Q. 5. Do you make any investigation, use any data in selling or buying stock?

A. If a man has any to sell, I ask what he is going to sell for.

Q. 6. Do you go to the banks for any information?

A. No, sir.

Q. 7. Do you ever refer to the national bank statements?

A. Very seldom.

Q. 8. Did you ever examine the reports of the banks in
438 this city, or any of them, either in the Financial Review or in the Leader?

A. Yes, I look at them and see how they stand.

Q. 9. Will you state from the Mercantile national bank's report under May 21, 1897, what data you would use there as a broker to ascertain the value of that stock, either as a salesman or a purchaser?

To which question plaintiff objected because the witness has stated that when he goes out to sell stock he offers for it what the seller is willing to sell at, and that when he goes to buy he pays what the buyer is willing to pay for it.

A. I would not use it as a value. I am not the one that determines the value. The buyer is the one that determines the value of it.

Q. 10. You go purely upon what the stockholders and officers of the bank will take for their stock, and what the man that wants to buy wants to buy it for?

A. The man who had the stock to sell or the stockholder, he is the only man I have any dealings with. The officers would not affect me at all. I would not ask them any questions. They would not be apt to tell me if I did.

Q. 11. Didn't they complain that you put the stock in too low or too high?

A. I could not state positively of any bank that did.

Q. 12. Didn't you say that you have had complaints because you quoted their stock too low during 1897?

A. I would not say positively, I might have had such a thing occur. I don't remember. I could not state any particular bank. I have heard of complaints, but none direct to me.

Q. 13. Are these reports that are published of that date the market value of the stocks that you have there in the Leader of that date that was testified to by the preceding witness?

A. I say the market value is the value a man will pay.

Q. 14. Did you have any of these stocks to sell or buy?

A. Yes, I think so.

Q. 15. Did they vary from that price, and if so, how much and what banks?

A. Do you mean some particular bank?

Q. 16. Can you give us your sales and amounts for May, 1897?

A. No, sir, not unless I was forced to do it. It wouldn't be just to the buyer or seller. It is private information.

Q. 17. I don't care for any other feature of your business except the plaintiff's bank stocks?

439 A. I will repeat my former answer.

Q. 18. Are you an officer of the bank?

A. No, sir, I am a director, that's all.

Q. 19. Who has charge of that bank?

A. Mr. D. O. Lamprecht.

Q. 20. You returned the sales to him?

A. Yes.

Q. 21. Will you refresh your memory and return here and tell us what sales you made in the month of May, 1897, of the stocks of any of these plaintiff banks?

A. If I am required to do so, I will, but I don't like to. The stability of our business depends mostly upon our keeping these prices and all the doings of our house strictly within ourselves. It would not be just to disclose any of our records.

Q. 22. I do not ask the names of the parties. Give the prices only and the names of the banks.

By the SPECIAL MASTER: I will ask you to do that.

A. I haven't the authority to furnish these items. Mr. Lamprecht would have to do that.

G. N. CALVERT recalled for further cross-examination.

By Judge BOYNTON:

Q. 1. The statement you have made of the market value of shares of the various banks is founded on the newspaper report of what purports to be reported to the Comptroller of the Currency?

A. Yes, it was.

Q. 2. I believe you have already stated that you did not know

whether in that report any bad or uncollectible debts were included as good ones?

A. I believe I stated that.

F. J. SMITH, in behalf of said defendant deposes and says further as follows:

Direct examination.

By Mr. MONNETT:

Q. 1. Have you the statement that your firm made of sales of stock to any national bank preceding or succeeding the month of May 1897, and three months either way?

To which question plaintiff objected.

440 A. I have from February 18th to July 22nd.

Plaintiff objected to witness testifying to individual sales and purchase by and for Lamprecht Bros.

A. There was a sale of Union National Bank stock the date I cannot give. This is in the interval between Febru-ry 18th and July 22nd. That was 128.

Q. 2. How many shares?

A. 50 shares.

Q. 3. All in one sale?

A. Yes.

Q. 4. To one party?

A. Yes, to one party.

Q. 5. Was that an officer of the bank or a stockholder that sold that?

A. It was not an officer.

Q. 6. Was either the purchaser or seller an officer?

Plaintiff objected to witness giving names of individuals.

A. I am not required to answer that. That's confidential information. Here is 25 shares of Park national sold at 121; 25 shares Euclid Avenue nat'l at 141; 25 shares Park national, at 125; 5 shares Park national, at 120.

Q. 7. Anything else?

A. Nothing else.

CHARLES L. MURFEY, heretofore duly sworn, being produced in behalf of said defendant deposes and says as follows:

Direct examination.

By Mr. MONNETT:

Q. 1. You were heretofore sworn and testified in chief for the plaintiff, I believe?

A. Yes.

Q. 2. Did you comply with section 5211 of the Federal Statutes which requires the cashier according to the form prescribed, to fur-

nish under oath to the Comptroller of the Currency and attested by three directors, a report, and exhibit in detail and under appropriate heads the resources and liabilities of your bank at the close of business on or about March 9th, 1897?

A. Yes.

Q. 3. And in that report as published it gives your capital stock paid in one million dollars, surplus fund $200,000, undi-
441 vided profits less expenses and taxes paid $106,580.96. Was that the report made under section 5211 as required by statute?

A. Yes, to the Comptroller of the Currency.

Q. 4. Under date of May 20, 1897, you made a report to the Comptroller of the Currency under section 5211, exhibiting your resources and liabilities at the close of business on the 14th day of May, 1897, capital stock one million dollars, surplus fund $200,000, undivided profits less expenses and taxes paid $89,413.87?

A. Yes.

Q. 5. Was that correct?

A. That's correct.

Q. 6. Under the same section you purport to exhibit in detail and under appropriate heads the resources and liabilities of your bank at the close of business on July 27, 1897, certified to by three directors, in which you purport to have one million dollars capital stock, surplus fund $200,000, undivided profits less expenses and taxes paid $94,254.77. Was that the true report?

A. Yes.

Q. 7. And under section 5199 the directors of your bank may semi-annually declare a dividend of so much of the net profits of your bank as they shall judge expedient, but each association shall before the declaration of a dividend carry one-tenth part of its net profits of the preceding half year to its surplus fund till the same shall amount to 10 per cent. of its capital stock. Did you do that?

A. Yes.

Q. 8. Did you bring your surplus up to that statutory limit in 1897?

A. It was up to that limit long before.

Q. 9. Section 5204 of the Federal Statute requires you before paying any dividend to make a report of your earnings and dividends to the Comptroller of the Currency. Did you make such report in the fall of 1896 preceding the taxing month of May 1897?

A. Yes.

Q. 10. Will you please make that Exhibit A and attach it to your deposition?

A. That's a copy of our report to the comptroller.

Q. 11. Will you make us a copy and make it Exhibit A of your deposition?

A. Yes.

Q. 12. In that report you declared a dividend of three per cent., or $30,000 on one million dollars. Was that correct?

A. Yes.

442 Q. 13. And under section 5204 you made a report of earnings and dividends of May 1st, 1897, and declared a dividend of three per cent., $30,000?

A. Yes.

Q. 14. Was that correct?

A. Yes.

Q. 15. The statute referred to requires your bank, before it can declare a dividend to charge off any losses it had prior to that time sustained, equal to or exceeding its undivided profits then on hand. Did you do that?

A. What date was that—no, sir, there were no losses charged off at that time.

Q. 16. The report is true is it not?

A. Yes.

Q. 17. And it says further that no dividend shall ever be made by any such bank while it continues its banking operations, to an amount greater than its net profits then on hand, after deducting its losses. Did you do that?

A. There was no deduction made for bad debts.

Q. 18. Did you have any bad debts within the meaning of that statute?

A. Yes, I think so, at the time.

Q. 19. The Federal Statutes forbids your declaring a 3 per cent. dividend if you had any bad debts or losses. Did you make that dividend contrary to the statute?

A. We took it out of our undivided profits what we were short, and the surplus was left intact.

Q. 20. According to that you had an amount of net profits undivided to be carried forward of $94,650.06, after taking out the $30,000 dividend. And in that report you say you had no bad debts or decrease of values since your last report?

A. We had had debts but they were not charged off.

Q. 21. Bad debts are defined by the Federal Statute as debts due to the association on which interest was past due and unpaid for a period of six months, unless the same was well secured and in process of collection. Were your bad debts not well secured and not in process of collection, those that you concealed from the Comptroller of the Currency when you declared this dividend?

A. They were carried along as a liability. There was no report made of them.

Q. 22. You treated them as assets?

A. Yes.

Q. 23. Were they still on hand and treated as assets during that taxing year up to October 31, 1897, when you made your second report?

A. They were treated as an asset.

443 Q. 24. They were not a bad debt within the meaning of the Federal statute, were they?

A. The bank wanted to charge them off, but they deferred charging them off until later.

Q. 25. You did not charge them off during that entire taxing year, did you?

A. We charged them off last spring.

Q. 26. You declared a dividend on net earnings and profits of three per cent., and yet after that division you had under section 5204 $84,800 left, did you not, from the fall of 1897?

A. Yes, we had undivided profits on hand $84,000.

Q. 27. These reports were true, were they not?

A. Yes, that's the condition of the bank.

Q. 28. Did you have any moneyed capital personally that you returned for taxation in the year 1897?

A. No, sir.

Q. 29. Did you know anybody connected with your bank that returned moneyed capital at less than its true value in money?

A. No, sir.

Q. 30. Did you know anybody in Cleveland that did?

A. I did not.

Cross-examination of CHARLES L. MURFEY.

By Judge BOYNTON:

Q. 31. In making your report to the county auditor in the month of May, 1897, how much did your bank deduct for bad debts?

To which question defendant objected because the sworn report to the Comptroller of the Currency shows the exact amount.

A. We deducted $20,000.

books?

Q. 32. That was all?

A. Yes.

Q. 33. You may state whether your report to the Comptroller of the Currency exhibits the face of your books?

To which question defendant objected because the statute requires for them to exhibit their true resources under appropriate heads, and the liabilities of their association.

A. Yes.

Q. 34. And if any debts that are actually bad have not been charged off, they go into that report as assets?

A. Yes.

444 Redirect examination of CHARLES L. MURFEY.

By Mr. MONNETT:

Q. 35. The State statute requires you as cashier to make out and return to the auditor of Cuyahoga county under section 2765 on the second Monday of May annually and report in duplicate under oath, exhibiting in detail and under appropriate heads the resources and liabilities of such bank at the close of business on the Wednesday next preceding the second Monday. Did you do that?

A. Yes.

Q. 36. They are using exactly the same language and practically the same date. How do you account for the difference?

A. We made a deduction to the auditor of Cuyahoga county. We deducted $50,000 for the depreciation of our property at the present bank on Superior street. It depreciated from $500 to $1,000 a foot during the last three years. We deducted $50,000 for the depreciation of real estate. And we deducted $20,000 for doubtful paper. Since that report the bank has charged off $84,000 of bad paper last spring.

By Judge BOYNTON:

Q. That they had on hand at that time in 1897?

A. Yes.

Q. 37. But in October, 1897, following the report to the auditor of Cuyahoga county in May, 1897, you swore in the return to the Comptroller of the Currency that you had no bad debts. How do you account for that?

A. We charged them off since that report. They didn't ask us whether we had any bad debts. We didn't charge them off. We carried these along as doubtful paper at that time, but it showed on our books as assets.

Q. 38. You mean to say when you made your October report to the Comptroller of the Currency you had bad debts past due and unpaid without security that you treated as valid assets?

A. We showed to the Comptroller of the Currency the amount of past-due paper at that time. They did not call it a bad debt. It showed as past-due paper. We had to give a report of the condition of the bank.

Q. 39. On your affidavit that there was no bad debts in October, 1897, under section 5204, you answered the question "Losses sustained through bad debts and decrease of values—nothing"?

A. We hadn't charged them off then. There had been no entry made.

445 Q. 40. Yet you had sworn six months before that to the auditor of Cuyahoga county that there was $84,000 of bad paper?

A. $50,00- of that was real estate.

By Judge BOYNTON:

Q. And I understand you that later on you charged off $80,000 of bad paper that you had on hand at the time you made your return to the auditor?

A. Yes. We always made return to the county auditor just as we did to the Comptroller of the United States.

Said exhibits referred to by this witness are hereto attached and marked for identification Defendant's Exhibit Murfey A, B and C, respectively, and the same are made a part of this deposition.

Further hearing adjourned until 2 p. m. of this day, November 29th, 1898.

DEFENDANT'S EXHIBIT MURFEY A.

Copy 1.

Report of Earnings & Dividends of the Mercantile National Bank for Six Months Ending Oct. 31st, 1896. Declared Oct. 30th. Payable Nov. 2nd, 1896.

Losses sustained		Gross earnings	74,543 72
Expenses and taxes paid	40,906 67	Other profits	554 66
Net earnings	34,191 71		
	75,098 38		75,098 38
Dividend of 3 per cent. on $1,000,000	30,000 00	Net earnings for six months	34,191 71
Am't net profits carried for'd	99,616 55	Undivided profits from last report	95,124 84
	129,616 55		129,616 55
Total surplus	200,000 00	Total profits since organization	989,616 55
Total dividends	690,000 00		
Total other profits on hand	989,616 55		989,616 55

DEFENDANT'S EXHIBIT MURFEY B.

Copy 1.

Report of Earnings & Dividends of the Mercantile National Bank for Six Months Ending May 1st, 1897. Declared April 30th, 1897. Payable May 3rd, 1897.

Losses sustained		Gross earnings	68,558 44
Expenses and taxes paid	43,524 93	Other profits	
Net earnings	25,033 51		
	68,558 44		68,558 44
Dividend of 3 per cent. on $1,000,000	30,000 00	Net earnings for six months	25,033 51
Am't net profits carried for'd	94,650 06	Undivided profits from last report	99,616 55
	124,650 06		124,650 06
Total surplus	200,000 00	Total profits since organization	1,014,650 06
Total dividends	720,000 00		
Total other profits on hand	94,650 06		
	1,014,650 06		1,014,650 06

446 DEFENDANT'S EXHIBIT MURFEY C.

Copy.

Report of Earnings & Dividends of the Mercantile National Bank for Six Months Ending Oct. 31st, 1897. Declared Oct. 29th, 1897. Payable Nov. 1st, 1897.

Losses sustained		Gross earnings	61,543 21
Expenses and taxes paid	41,392 94	Other profits	
Net earnings	20,150 27		
	61,543 21		61,543 21

Dividend of 3 per cent. on $1,000,000	30,000 00	Net earnings for six months.	20,150 27
Am't net profits carried for'd	84,800 33	Undivided profits from last report	94,650 06
	114,800 33		114,800 33
Total surplus	200,000 00	Total profits since organization	1,034,800 33
Total dividends	750,000 00		
Total other profits on hand.	84,800 33		
	1,034,800 33		1,034,800 33

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division.

I, Irvin Belford, special examiner to take testimony under the 67th rule, as amended, and under and by virtue of a decretal order in the case of The Mercantile National Bank of Cleveland, Ohio, complainant, against R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, respondent, pending in the circuit court of the United States within and for the northern district of Ohio, made and entered on the 11th day of August, A. D. 1898, do hereby certify that the witnesses,

Theodore M. Bates,
Albert E. Akins,
John Van Nostran,
James Molyneaux,
Norton T. Horr,
Edwin R. Perkins,
S. E. Williamson,
Thomas H. Wilson,
J. J. Sullivan,
W. G. Mather,
James Barnett,
W. S. Tyler,
Orville L. Jones,
A. L. Withington,
William Bingham,
447 Joseph Colwell,
J. E. Marks,
B. A. Hinsdale,
Frank Salisbury,
Luther F. Lyman,
Peter R. Fahey,
G. N. Calvert,
C. F. Farnsworth,
S. C. Hale,
Frank J. Smith,
F. J. Woodworth,
T. W. Hill,
F. J. Smith,
E. R. Date,
Geo. S. Russell,

Thos. H. Wilson,
H. R. Sanborn,
Charles L. Murfey,
F. R. Rittman,
J. J. Sullivan,
E. H. Bourne,
William P. Johnson,

whose depositions appear in the foregoing pages of volumes 1, 2, 3 & 4, were by me each severally duly sworn to testify the truth, the whole truth, and nothing but the truth. That said depositions were, at the request of both parties, under my direction taken down in shorthand by S. Louise Patterson, a skillful stenographer, approved by both parties, and by said stenographer thereafter put into typewriting. That said depositions were read over and examined by the solicitors interested therein, and now by agreement and stipulation of counsel for said parties the signatures of said witnesses to their testimony were waived and it was further stipulated that said depositions so far as competent, may be read in evidence the same as if they had been duly subscribed by said witnesses.

Said depositions were taken in pursuance of notices to the solicitors for the parties to said suit as to the first day therein stated, and thereafter by adjournment and agreement of parties on the several days therein named at the office of the clerk of the United States circuit court, northern district of Ohio, in the city of Cleveland, Ohio.

That the parties were represented at the taking of said depositions by their respective counsel as set forth.

That the documentary testimony and exhibits recited, were offered in evidence and marked as specially noted in the foregoing
448 depositions; and that I am not counsel or relative of either party or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand this 14th day of February, anno Domini, 1899.

IRVIN BELFORD,
Special Examiner.

NOTE.—This stipulation refers to the testimony of county auditors, excluded by stipulation of counsel.

Stipulation.

The above depositions, ten in number, having been taken for the purpose of showing the practice and custom of the various county auditors in listing moneyed capital for the purpose of taxation and also shares of incorporated banks for the year 1897 and for the purpose of showing that no other rule of practice or custom was adhered to in said counties being in all the other counties outside of the county of Cuyahoga, for the valuation of moneyed capital, than that set forth in the Revised Statutes of Ohio; further taking of proof herein is hereby dispensed with upon the agreement to the following stipulations, that is to say:

It is agreed, if the court holds it competent to put in proof of taxation of moneyed capital and bank shares outside of Cuyahoga county, that there is no discrimination for counties outside of the county of Cuyahoga in the State of Ohio, by the taxing officers of said counties in fixing the valuations for the purpose of taxation upon moneyed capital as against shares in incorporated banks.

2nd. It is further agreed that table 11, found in the report of the auditor of State for the year 1897, on pages 326, 327, 328, 329, 330, 331, 332, 333 and 334, may be taken as evidence as to the returns made by the individual county auditors of the valuation of national banks of the State board for the equalization of bank shares for the year 1897 and the percentage that was adopted by said auditors in making return to said State board, and also of the value fixed by said State board and for all other purposes for which the same may be competent. The above parol testimony of witnesses to be considered in connection with the proof offered relating to the valuation of national bank shares and other moneyed capital in the county of Cuyahoga, if the same shall be held competent. This stipu-
449 lation is not to bar the introduction of further or other proof along the line of the issues as presented by the pleadings except the evidence of the individual auditors of the several counties outside of the county of Cuyahoga.

W. W. BOYNTON,
Att'y for Pl'ff.
F. S. MONNETT,
Att'y General, for Def'ts.

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Plaintiff,
vs.
R. S. HUBBARD, Treasurer of Cuyahoga County, Ohio, Defendant.

DECEMBER 26TH, 1898.

Transcript of Testimony.

In accordance with the stipulations hereinbefore entered into, the testimony of Hon. W. D. Guilbert, auditor of State, is hereupon taken.

Present: W. W. Boynton. F. S. Monnett, att'y general & S. W. Bennett.

W. D. GUILBERT testified as follows:

Q. State your name and occupation.
A. W. D. Guilbert, auditor of State.
Q. How long have you occupied the position of auditor of State?
A. Since the second Monday of January, 1896.
Q. As such official, were you a member of the State board known as the board for the equalization of the shares of incorporated banks under section 2808, Revised Statutes.

A. Yes, sir.

Q. Who composed that board during the term in which you were a member of it?

A. Hon. Asa S. Bushnell, governor; Hon. S. F. Monnett, attorney general, and myself.

450 Q. About how many national banks were there in the State of Ohio to be equalized under the duties imposed upon said board for the year 1897?

A. I think about 240.

Q. Had they made their returns to your board for the purpose of equalization under section 2808 in that year, and if so, covering what period did the plaintiff banks file their report, was it the same as shown in the testimony of G. W. Taylor?

A. I cannot give definite dates but they were not all in at the time of the first meeting of the board, which was on the third Tuesday of June.

Q. You may state if there were other banks of the State that had not yet made their returns to this board?

A. Yes, sir; a number of others had not returned at that time.

Q. What was the custom as well as the action of the said board in such cases when the returns had not been forwarded at the statutory time for the first meeting, as far as you know as a member of said board or otherwise?

Counsel for plaintiff banks objected to the question so far as it related to the custom.

A. The members of the board would meet on the 3rd Tuesday of June and organize and after the organization would adjourn until all the returns were filed in this office.

Q. How long had you been a deputy or assistant in the State auditor's office prior to the time you were elected auditor?

A. Eight years.

Q. And has this custom of adjourning from time to time obtained to your knowledge during that period so far as the equalization of banks were concerned?

Counsel for plaintiff banks objected to the above question because it was irrelevant.

A. Yes, sir.

Q. Have the plaintiff banks been aware of that custom and construction of the statute given by the board in its actual workings in the last eight years, by appearing at different times during the year subsequent to the third Tuesday of June as indicated by the statute?

Objection by counsel for plaintiff banks for the reason that it is calling for an opinion and as otherwise irrelevant.

A. I think so.

Q. Or putting it more plainly have the plaintiff banks or any of them during the last eight years, to your knowledge, ever

451 appeared on the first day named by the statute, to wit, the

third Tuesday of June, for the purpose of equalizing their returns or having a hearing upon the equalizing of their returns?

A. They have not.

Q. What has been the mode or the manner in which said plaintiff banks have during the last eight years, appealed to this board for the purpose of complaint or being heard upon any of their returns, was it by notifying you or some member of the board between the third Tuesday in June and some time in December that they wished to be heard. Just state in what way and manner they themselves have treated the powers of this board?

Objected by counsel for plaintiff banks as indefinite and irrelevant and suggestive in its character.

A. Some time during the latter months of 1897 they — requested by correspondence to appear before the board. The custom has been usually to apply to the auditor of State for an opportunity to appear before the board.

Q. Any time from June to December, or between what dates?

Objection by counsel for plaintiff banks as leading.

A. Usually between the date of the first meeting of the board and prior to their *sine die* adjournment.

Q. What has been the usual time in the last eight years that the board has adjourned *sine die?*

(Objection.)

A. I cannot give definite dates but I think they have been as late as November.

Q. There was some question raised or criticism made in the testimony taken by the plaintiffs of Mr. Taylor, the secretary of the board, as to the entries upon the minutes of the board using the term "board adjourned," you may state what is the interpretation of that term as used by the board, did it mean *sine die*, or had it any other understood meaning, both by the boards or banks for the last eight years?

Objection by counsel for plaintiff banks on the ground that the record discloses that fact that the board adjourned to meet at the call of its secretary and not merely board adjourned.

A. It did not mean a *sine die* adjournment but it was understood to be a recess. In other words to be called together from time to time after the reports were received and the requests from the various banks for a hearing.

Q. Section 2809 of the Statutes of Ohio provide that your board shall hear complaints and equalize the value of said shares
452 according to rules prescribed and as set forth in said statute, and further provides that your board shall not increase or reduce the grand aggregate value of bank shares as returned by the several county auditors by some 20 per cent. I will ask you if the total amount or increase to the grand aggregate value of bank shares

as returned by the several county auditors was more than 20 per cent. for the year 1897?

A. No, sir; it did not equal 20 per cent.

Q. Was there any complaint filed from the third Tuesday of June until the adjournment *sine die* of this board by any of the plaintiff banks. I refer to the board for the equalization of the shares of incorporated banks in this question?

A. No, sir.

Q. Did any of said banks ask to have any kind of a hearing prior to the adjournment *sine die* in a period of almost five months?

A. No, sir.

Q. Did this board for the equalization of bank values attempt to equalize the value of anything but bank shares during the sessions of 1897?

A. No, sir.

Q. Were you also during the year 1897 by virtue of your position as State auditor a member of the board of tax revision organized under section 167 of the Revised Statutes of Ohio?

Objection by counsel for plaintiff banks because there is no such board.

A. Yes, sir; I was a member of that board.

Q. Do you remember of a committee representing the plaintiff banks appearing at your office to inquire about the action of the board for the equalization of bank values with regard to the action taken on the value of their bank shares?

A. Yes, sir; a committee of Cleveland banks called on our board for that purpose.

Q. State what took place between said committee and said board with regard to submitting their claims for reduction, grievances or errors claimed, to the board as organized under section 167 of the Ohio Statutes?

A. The board informed the committee that it was too late to give a hearing and relief as a State board of equalization for banks, for the reason that the board had adjourned *sine die*, but that we would give them a hearing under section 167.

Q. State whether you then offered to convene said board of tax revision organized under section 167 to consider the case of the various plaintiff banks?

453 A. Yes, sir; we offered to convene the tax revision board at such time as might be convenient for the representatives of the Cleveland banks to appear.

Q. Do you remember what their answer was to the proposition so made, or why, if at all, they refused to submit their case to the consideration of said board of tax revision for hearing?

A. I do not remember all that was said in regard to action by the board under section 167, but some doubt was expressed by some of the members of the committee that the board would not have the power under section 167 to afford as full relief as the board of equalization.

Q. State what the fact is as to whether they did or did not submit

their case and grievances and alleged errors before said board of tax revision?

A. Only one of the Cleveland banks appeared before the board and that was Mr. Wilson, of the First national the others did not. The others declined under the advice of counsel.

Cross-examination.

Examined by Judge BOYNTON:

Q. Did the board or any member of it cause any notice to be given to the Cleveland banks of the date of any meeting on which the cases of the Cleveland banks would be considered by the board of equalization?

A. I believe not.

Q. The committee that came down from Cleveland to have an interview with the board, reached here on some of the last days of December did they not?

A. That is my recollection.

Q. Previous to the coming of the committee in the latter part of December the board for the equalization of bank shares had adjourned *sine die*, had it not?

A. Yes, sir.

Q. Did, or did not, that committee request a hearing before the board for the equalization for their banks, and were they not informed that such a hearing could not be had, but that you would hear them as a board of remission under 167?

A. They were so informed by the board, because they had come after the *sine die* adjournment.

Q. Can you give us the date on which the *sine die* adjournment of the board took place in 1897?

A. I do not remember the date it was a matter of record. It was some time prior to the coming of the Cleveland committee.

454 Redirect examination.

Examined by General MONNETT:

Q. Mr. Auditor, under section 166 of the Revised Statutes of Ohio, it is made your duty, I believe, to prepare and transmit to the auditors of the several counties in the State such forms of returns to be made by them to your office and such instructions upon any subject affecting the State finances as is fully set out in that section; and did you under said statute or any other authority prepare blank forms for the auditors to transmit to the plaintiff banks together with all other incorporated banks of the State upon which to make said returns, and if so will you furnish to the notary a copy thereof and mark it Exhibit "A"?

A. Yes, sir, I prepared and furnished form 32–1000 to the auditor of plaintiff's county and all other counties of the State, which form is submitted and marked Exhibit "A."

Q. You may state whether the form you have just described was used in the year 1897 by the auditor of Cuyahoga county and

whether it was used by the plaintiff banks in making their returns?

A. Yes, sir; the form was used in 1897.

Q. And were they sent out prior to the third Tuesday in June?

A. Yes, sir; they are always sent out the latter part of April or early in the month of May, and were in 1897.

Recross-examination.

Examined by Judge BOYNTON:

Q. You may state whether or not the assessor's blank that I have put into your hands is the form that you sent out for tax-payers generally for the year 1897?

A. The same thing, yes, sir.

Q. Will you make that a part of your deposition and mark it Exhibit "B"?

A. Yes, sir.

And thereupon said blank was marked Exhibit "B."

Q. I notice that number 14 on the blank marked Exhibit "B" reads as follows: "Value of all credits as defined by law, section 2730, including mortgages real and chattel," and also "all money loaned on pledge of real estate, although a deed or other instrument may have been given for the same, if between the parties the same is considered as security merely" (see section 2734), "deducting therefrom the sum of all legal *bona fide* debts, except
455 such as are not allowed by law to be deducted. (Section 2730.) (Debts may be deducted only from credits.)" Is that your formulation for returning all credits?

A. Yes, it is the formulation in compliance with the statute for returning credits for taxation.

Redirect examination.

Examined by General MONNETT:

Q. We ask you to have the tax notice of unincorporated banks attached as Exhibit "C."

A. Yes, sir.

And thereupon said tax notice was marked Exhibit "C" and made a part hereof.

W. D. GUILBERT.

It is hereby stipulated that letters to the board or any members of this board of equalization for bank shares, from any officers of the plaintiff banks concerning the subject-matter of this suit, can be hereafter read in evidence, subject to objection for irrelevancy or incompetency by either party.

F. S. MONNETT,
Att'y General.
W. W. BOYNTON.
Att'y for Pl'ff.

Fees for taking deposition:
Clara M. Carey—$7.50.

Form 32—1000.

Forms for bank statements, in duplicate, under provisions of sections 2762, 2763, 2764, 2765, 2766, 2767, 2768, and 2769, and amended sections 2766, 2808, 2809, 2810, Revised Statutes of Ohio. See O. L., vol. 80, pp. 54 and 55.

Banks or Banking Associations Organized under the Laws of the State of Ohio or of the United States.

To the cashier of the — bank, ——, Ohio.

SIR: You are hereby required to make out upon the forms herewith, and return to me at my office, at ——, in the county of ——, Ohio, on or before the second Monday of May, A. D. 189–, a report in duplicate, under oath, exhibiting in detail the resources
456 and liabilities of the above bank or banking association, at the close of business on the first Wednesday after the first Monday of May preceding such report, together with a full statement of the names and residences of stockholders therein, with the number of shares held by each, and the par value of each share. You are also required to accompany this return with a copy of the report to the Comptroller of the Currency, made next prior to the second Monday of May, 189–.

Dated —— —, 189–.

——— ———,
Auditor of —— County, Ohio.

Resources.

Loans and discounts	
Overdrafts	
U. S. bonds to secure circulation	
U. S. bonds to secure deposits	
U. S. bonds on hand	
Other stocks, bonds and mortgages	
Due from approved reserve agents	
Due from other banks and bankers	
Real estate, furniture and fixtures	
Current expenses and taxes paid	
Premiums paid	
Checks and other cash items	
Exchanges for clearing-house	
Bills of other banks	
Fractional currency	
Specie	
Legal-tender notes	
U. S. certificates of deposit	
Due from U. S. Treasurer	
Total	

Liabilities.

Capital stock paid in.....
Surplus fund.....
Other undivided profits.....
National bank notes outstanding.....
State bank notes outstanding.....
457 Dividends unpaid.....
Individual deposits.....
United States deposits.....
Deposits of U. S. disbursing officers.....
Due to other national banks.....
Due to State banks and bankers.....
Notes and bills rediscounted.....
Bills payable.....

Total.....

GUILBERT EXHIBIT A.

The par value of each share of stock in this bank is — dollars, and the appraised value (for taxation) of the real estate owned by the bank is — dollars. See affidavit upon third page of this report.

—— ——, *Cashier.*

Names of stockholders.	Residences.	No. of shares.
Amount carried forward.....		

Statement—Continued.

Names of stockholders.	Residences.	No. of shares.
Amount brought forward.....		
Total number of shares.....		

Affidavit.

THE STATE OF OHIO, }
—— *County,* } *ss:*

I, —— ——, cashier of — bank of ——, Ohio, do solemnly swear that the foregoing is a correct statement of the resources and liabilities, of the names and residences of the stockholders, of the number of shares held by each, of the par value of the shares of said bank at the close of business on the first Wednesday after the first Monday of May, 189–.

—— ——, *Cashier.*

Sworn and subscribed to before me, a — in and for said county, this — day of —— 189–.

—— ——.

(In duplicate.)

458 Office of the auditor of —— county.

——, Ohio, ——, 189–.

To the State board of equalization for incorporated banks:

I hereby certify that I have fixed the value of the shares of — Bank of —— for the year 189–, as follows:

— shares of par value of $—..... $
From which is to be deducted the value of the real estate owned by said bank which stands upon the duplicate at..

Leaving taxable valuation of shares at..... $

—— ——,
Auditor —— County, Ohio.

This return to be made to the auditor of State for the use of the State board of equalization of incorporated banks on or before the 10th day of June.

Annual statement of the — Bank of ——, —— county, Ohio. —. Received at the county auditor's office, —— 189–.

Guilbert Exhibit "B."

Form 39.

Tax Notice for 1899.

To —— ——.

You are notified to make out and hold in readiness for me a statement, in the following form, of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, annuities, or otherwise, in your possession or under your control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting officer, agent or factor, or otherwise, in the township, city or village in which you reside, or did reside, on the day preceding the second Monday of April, 1890 (as per rule VI, next page). You will also be prepared to furnish the statistics of crops, etc., indicated by the schedule on the last page of this notice.

Dated —— —, 1890.

—— ——, *Assessor.*

459 *Statement of Personal Property, Moneys, Credits, &c., Subject to Taxation in —— for the Year* 1890, *Belonging to —— ——, and Listed by —— ——.*

	Number.	Total value.
1. Horses.....		
2. Cattle.....		
3. Mules and asses.....		
4. Sheep.....		
5. Hogs.....		
6. Pleasure carriages of whatever kind and bicycles...		

		Value, dollars.
7.	Value of household goods and furniture of every kind, gold and silver plate, chinaware, books, pictures and paintings.....	
	(*a.*) All jewelry of gold and silver, and all pins, rings, necklaces, bracelets or other articles of jewelry set or embellished with diamonds, emeralds, rubies, or other precious stones, or with pearls or other valuable settings.....	
	(*b.*) Farming utensils, wagons, carts, carriages, etc.	
	(*c.*) Grain, wool, hives of bees, agricultural products of every kind.....	
	(*d.*) Lumber, coal, wood and stone.....	
	(*e.*) Vessel or vessels or share in such vessels, steamboats, canal-boats or shares in such boats.....	
	(*f.*) Office furniture and fixtures, iron safes, etc., etc.	
	(*g.*) All other articles of personal property not included in any of the foregoing or subsequent items of this statement.....	
	Total amount of item seven.....	

		Number.
8.	Watches.....	
	9. Piano-fortes and organs.....	
460	10. Average value of all goods and merchandise owned or held by me as a merchant during the year or part thereof, ending the day preceding the second Monday of April, 1899. See section 2740. See rule 4, next page.....	
11.	The value of the property which such person is required to list as a banker, broker or stock-jobber. See section 2737.....	
12.	Average value "of all articles purchased, received or otherwise held by me as a manufacturer, for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining," during the year, or part thereof, on the first day of April, 1899. See O. L., vol. 88, page 341. See rule 5, next page.....	
	(*a.*) Average value of all articles on hand during the year or part thereof previous to the first of April, 1899, which have been by me manufactured or changed in any way, either by combination, rectifying, refining or adding thereto.....	
	(*b.*) Value of all tools, implements, engines and machinery used, or designed to be used in manufacturing, except such as are appraised as part of the real estate.....	
	Total amount of item twelve.....	

13. Value of all moneys, in possession or on deposit, subject to order on the day preceding the second Monday of April, 1899.....

14. Value of all credits as defined by law, section 2730, including mortgages, real or chattel, and also "all money loaned on pledge of real estate,
461 although a deed or other instrument may have been given for the same, if between the parties the same is considered as security merely," (see sec. 2734), deducting therefrom the sum of all legal *bona fide* debts, except such as are not allowed by law to be deducted. (Section 2730.) (Debts may be deducted only from credits).....

The stock or shares of individuals in building and loan associations must be listed as credits and included in this item, at their true value in money, on the day preceding the second Monday in April in each year. (See section 3836–7, O. L., v. 88–469.)

Total of all taxable credits.....

Less deduction for debts (debts can only be deducted from item 14.).....

Total of item fourteen, after deducting debts.....

15. The amount of all moneys invested in bonds, stocks, joint stock companies, annuities or otherwise.....

16. The average amount or value, for the time he held or controlled the same within the preceding year, of all moneys, credits or other effects, within that time invested in or converted into bonds or other securities of the United States, or of this State, not taxed, except greenbacks, to the extent he may hold or control such bonds or securities on said day preceding the second Monday of April, but no indebtedness created by the purchase of said bonds or securities shall be deducted from the credits in the 14th item as above.....

Number.

462 17. Value of all dogs where owner fixes a value. (The owner may fix any value he chooses, but is not required to swear to it.)

Grand total of all items.....

18. Number of dogs. Males over three months old must be listed by owner or assessor.....
19. Number of dogs. Females over three months old must be listed by owner or assessor.....

Have you erected any new buildings since April 10, 1898?
On what lot or land situated?
Kind of building?
Cost of same, $
Value for taxation, $
Did you make any additions to or improvements on any building since April 10, 1898?
On what lot or land situated?
Kind of building?
Cost of same, $
Value for taxation, $
Was any building owned by you wholly or partially destroyed or removed since April 10, 1898?
On what lot or land situated?
Duplicate value,

Printed on margin:

If the person required by law to list, refuses or neglects to swear to the number and value of the property embraced in the first nine items or the correctness of the number, if exhibited, or refuses or neglects to list and swear to the number and value of the whole or of any of the other items in the list, when requested to do so by the assessor, the assessor will then make the return from his own knowledge, or from information of others, and will enter on the margin of the list, "Refused to list," or "Refused to swear," as the case may be, to which return the auditor will add fifty per cent. as penalty.

In making up your return on this blank give amounts in dollars only.

463 THE STATE OF OHIO, } *ss:*
—— *County,* }

I, (*a*) —— —— do solemnly (*b*) — that the foregoing statement contains, as it actually existed on the day preceding the second Monday of April, 1898, a true account of all the taxable personal property, moneys, credits and investments in bonds, stocks, joint stock companies, annuities or otherwise, owned or controlled by me, for my own use, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting officer, agent, factor or otherwise, and also of all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, held for myself or any one residing in this State, for whom I am required by law to list by any party residing in or out of this State, and not listed for taxation in pursuance of law, in this State by me, and every interest and right, legal or equitable, of my own and of those for whom I am required by law to list in any bonds, stocks, joint stock companies, or otherwise, which I am required by law to list for taxation, and that the value

affixed to each of said items is the value thereof as ascertained by the usual selling price thereof for cash, at voluntary sales thereof, at this time and place; and (there being no usual selling price) then at such price as could be obtained therefor in money, at this time and place, and that I have not made any acknowledgment or agreement, or contracted any debt, without receiving an adequate consideration therefor, or resorted to any device, or created any trust, or sold or exchanged or disposed of any money, property or effects, which were taxable in this State, for U. S. bonds or other non-taxable securities or moneys, for the purpose of evading taxation or diminishing the amount of my return for taxation, and that all interest that I have or own in any credit or evidence of indebtedness, secured in any manner, upon real estate or personal property, situated outside of this county, or in any taxable stocks or bonds, or in any stocks or bonds of any foreign corporation, has been duly listed by me for taxation.

——— ———,
No. — ——— *Street.*

P. O. ———.

Sworn to and subscribed before me, this — day of ———, 1898.
——— ———, *Assessor.*

(*a.*) This blank must be filled with the name of the person making the affidavit.
(*b.*) This blank must be filled with the word "swear" or "affirm."

464 *Rules for Valuing Personal Property.*

I. Section 2739 of the general tax law that took effect January 1, 1880, declares: "Personal property shall be valued at the usual selling price thereof, at the time of listing, and at the place where the same may then be, and if there be no usual selling price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor in money, at such time and place. Investments in bonds, stocks, joint stock companies, or otherwise, shall be valued at the true value thereof in money." Money, whether in possession or on deposit in banks, or with persons, subject to draft on demand, shall be entered in the statement at the true value thereof. The balance of all credits (after deducting the legal *bona fide* indebtedness of the person listing,) payable either in money, property of any kind, labor or service, shall be estimated, in making up the statement, at its true value, which is the amount that can be collected. Annuities, or moneys receivable at stated periods, shall be valued at the price which the person listing the same believes them to be worth.

II. Each individual residing in this State may deduct a sum not exceeding one hundred dollars as exempt from taxation; but all above that amount must be returned to the assessor. But in families, this applies only to the head of the family, unless the other members own separate property independent of such head.

III. The necessary wearing apparel, and all articles of food provided for the present use and support of an individual or family, are not to be regarded as objects of taxation. (This is limited to provisions for the individual or family, and does not include food for cattle or stock.)

IV. Merchants must include in their statements the monthly average value of their goods and merchandise. It is the average of the merchant's proper- in his business during the preceding year, or part thereof, and not the value of the capital employed, that must be returned.

V. Manufacturers must include in their statements the monthly average value of all articles purchased, received, or otherwise held, for the purpose of manufacturing, combining, rectifying or refining, which from time to time they shall have had on hand during the year next previous to the time of making such statement, if so long they shall have been engaged in business, and if not, then during the time they shall have been so engaged. All material, of every description, held for the purpose of adding to the value thereof
465 by any process or operation of manufacturing, combining, &c., is the manufacturers' raw material, and he is to return for taxation the monthly average value of the same, which he had on hand during the preceding year, in the same condition in which it was purchased or received. He is also required to return the monthly average value of all articles which were at any time by him manufactured, or changed in any way, either by combination, or rectifying, or refining, or adding thereto, which from time to time he shall have had on hand during the year next previous to the first day of April annually; if so long, he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged, with the value of tools, implements, engines and machinery used in manufacturing, except such as are appraised as part of the real estate to be returned in separate items. So much of the manufacturers' property as is required to be returned by this rule, under item 12, together with the values returnable under other items of the tax notice, make up the values to be returned by the manufacturer, and not the capital employed in his business.

VI. All personal property upon farms, and merchants' and manufacturers' stock must be returned for taxation, and taxed in the township and town in which they are situated. But moneys and credits must be entered for taxation in the township and town in which the person charged with the tax thereon resided at the time of the assessment.

VII. No person is required to include in his statement of any share or portion of the capital stock or property of any company or corporation, whose duty it is, by law, to list and return its capital and property for taxation in this State.

VIII. A refusal to swear to the value of personal property included in the first nine items of the statement does not render it liable to the penalty of fifty per cent. provided the owner thereof makes oath that he has fully and correctly exhibited said property

to the assessor, and has made oath as to the other items of the statement.

IX. Unless the value of the property listed is sworn to, the assessor shall not be governed by the amounts at which the owner may wish them returned; but shall fill the statement by placing opposite each kind of property such an amount as he believes to be its full value. Neither shall the assessor return any property at less than its true value, in consideration of the fact that the penalty is to be added, because its owner "refused to swear."

466 *Form of Oath or Affirmation Where There is no Property Exceeding One Hundred Dollars in Value.*

(The assessor must administer this oath to all who claim not more than one hundred dollars in value.)

I do solemnly — that I do not own, hold, possess, or control any personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, which are by the laws of Ohio subject to taxation, or which I am by law required to list in my own right, or as the holder thereof; or otherwise.

—— ——.

Sworn to and subscribed before me, this — day of ——, 1898.

—— ——, *Assessor.*

Crops of 1897 *and Other Statistics.*

Bonds, &c., exempt from taxation—Amount now owned or held of all United States bonds, bonds of the State of Ohio, certificates of indebtedness, that are exempt from taxation by any law of the United States or of this State..... $

Wheat—Number of acres sown for crop of 1897.....
Number of bushels produced in 1897.....
Number of acres sown for harvest of 1898.....
Rye—Number of acres sown for crop of 1897.....
Number of bushels produced in 1897.....
Number of acres sown for crop of 1898.....
Buckwheat—Number of acres sown in 1897.....
Number of bushels produced in 1897.....
Oats—Number of acres sown in 1897.....
Number of bushels produced in 1897.....
Number of acres sown for crop of 1898.....
Barley—Number of acres sown for crop of 1897.....
Number of bushels produced in 1897.....
Number of acres sown for crop of 1898.....
Corn—Number of acres planted in 1897.....
Number of bushels produced (as shelled) in 1897.....
Number of acres in corn for 1898 (estimated).....
Broom-corn—Number of acres planted in 1897.....
Number of pounds of broom brush produced in 1897..

467 Commercial fertilizer—Number of pounds used during 1897.....
Cost of for 1897.....
Pounds bought for crop of 1898.....
Cost of for 1898.....
Hay—Number of acres in grass (other than clover) in 1897...
Number of tons of hay produced in 1897.....
Clover—Number of acres grown in 1897.....
Number of tons of hay from clover in 1897.....
Number of bushels of seed in 1897.....
Number of acres plowed under for manure in 1897.....
Flax—Number of acres sown in 1897.....
Number of bushels of seed in 1897.....
Number of pounds of fiber obtained in 1897.....
Potatoes—Number of acres planted in 1897.....
Number of bushels produced in 1897.....
Number of acres for crop of 1898 (estimated).....
Tobacco—Number of acres planted in 1897.....
Number of pounds produced in 1897.....
Milk—Number of gallons sold for family use in 1897.....
Butter—Number of pounds made in home dairies in 1897...
Number of pounds made in factories and creameries in 1897.....
Cheese—Number of pounds made in home dairies in 1897...
Number of pounds made in factories and creameries in 1897.....
Sorghum—Number of acres planted in 1897.....
Number of pounds of sugar in 1897.....
Number of gallons of syrup in 1997.....
Maple sugar and syrup in 1898—Number of trees from which sugar was made during the season.....
Number of pounds of sugar.....
Number of gallons of syrup.....
Bees—Number of hives in 1897.....
Honey—Number of pounds produced in 1897.....
Eggs—Number of dozen produced in 1897.....
Number of dozen shipped to places beyond State in 1897.....
Grapes and wine—Number of acres planted in the year 1897.
468 Whole number of acres in vineyards to close of year 1897.....
Whole number of pounds of grapes gathered in the year 1897.....
Number of gallons of wine pressed in the year 1897...
Sweet potatoes—Number of acres planted in 1897.....
Number of bushels produced in 1897.....
Orchards—Number of acres occupied by orchards in 1897....
Number of bushels of apples produced in 1897.....
Number of bushels of peaches produced in 1897.....
Number of bushels of pears produced in 1897.....

Number of bushels of cherries produced in 1897.....
Number of bushels of plums produced in 1897.....

Lands owned in 1897, viz:
Number of acres of cultivated land.....
Number of acres of pasture land.....
Number of acres of wood land.....
Number of acres of other uncultivated land (lying waste).....

*Total number of acres owned in 1897.....

Horses—Number owned in 1897.....
Cattle—Beef cattle owned in 1897.....
Milch cows owned in 1897.....
All other cattle owned in 1897.....

Total number of cattle owned in 1897.....

Sheep—Number owned in 1897.....
Number killed by dogs in 1897.....
Value..... $
Number injured by dogs in 1897.....
Value..... $
Wool—Number of pounds shorn in 1897.....

Domestic animals died from diseases in 1897.

Hogs—Number.....
Value..... $
Sheep—Number.....
Value..... $
469 Cattle—Number.....
Value..... $
Horses—Number.....
Value..... $

Assessors must visit all creameries and cheese factories, and ascertain and report pounds of butter and cheese made in them. Also visit village and city milkmen, and ascertain and report amount of milk sold for family use. These are new and important items on the schedule.

*Cultivated, pasture, wood land, and other lands, must equal the total number of acreage.

The above form of statistics approved by me for the year 1898.

W. W. MILLER,
Secretary of Agriculture.

Penalty for Refusing to Give Assessors True Statements of Statistics.

"Any person, company or corporation, refusing to make out and deliver a statement of the facts, or any of them herein required, shall forfeit any pay to the State any sum not more than one hun-

dred dollars nor less than fifty dollars, to be recovered and paid as in the next preceding section provided as to penalty on an assessor." (Revised Statutes, vol. 1, sec. 1525.)

Assessors will call special attention to the foregoing law, and note the refusal or neglect of any person or persons to comply with its requirements.

Official Penalties.

"If an assessor neglects or refuses to make out and return statistics, as herein required, he shall forfeit and pay to the State any sum not more than one hundred dollars nor less than twenty dollars, to be recovered by action, which shall be brought by the prosecuting attorney on the request of the auditor of State; and the amount recovered, less the prosecuting attorney's fee of ten per centum, shall be paid into the State treasury to the credit of the school fund." (Revised Statutes, vol. 1, sec. 1524.)

Also, in relation to the statistics of births and deaths, the
470 county auditor "shall withhold his order until the law has been complied with, to the satisfaction of the probate judge." (See Revised Statutes, vol. 2, sec. 6396.)

County auditors must, in all cases, have this entire sheet of three pages printed, as per this copy, without any omission.

W. D. GUILBERT,
Auditor of State.

NOTE.—For other official penalties, see Revised Statutes, sections 140, 1050, 1250, etc.

1898. Personal property. Return of —— ——, ward —, township —, for the year 1898. Filed ——, 1898. —— ——, county auditor.

GUILBERT EXHIBIT "C."

Form 2—500.

Tax Notice for Unincorporated Bank- and Bankers.

To —— ——:

In pursuance of the provisions of sections 2758, 2759, 2759*a*, 2759*b*, 2760 and 2761 of the Revised Statutes, and in conformity to the decision of the supreme court of Ohio, in the case of The Treasurer of Fayette County *vs.* The People's and Drovers' Bank, rendered October 24th, 1890, you are required to make out and return to me, under oath, on or before the second Monday of May, 189–, a statement of your assets as a banker or bankers, for the year ending the first Monday of May, 189–, in the following form.

The court, in the case above cited, in substance, held that to arrive at the true valuation for taxation, that the following should be observed: From the aggregate sum of the 1st, 2d and 5th items enumerated, the auditor shall deduct the aggregate sum of the 5th, 6th and 7th items; this will give the banker credits for taxation.

From the 4th item deduct the 8th item; to this remainder add the 3d and 9th items to the credits above ascertained, and the said amount so ascertained shall be entered on the duplicate of the county, in the name of such bank or bankers for taxation.

Dated —— —, 189–.

——— ———,

Auditor of —— County, Ohio.

471 *Statement.*

1st. The average amount of all notes and bills receivable, discounted or purchased..... $

2d. The average amount of all accounts receivable.....

5th. The amount of real estate at its assessed value for taxation.

Total..... ..... $

5th. The amount of real estate at its assessed value for taxation.....

6th. The average amount of all deposits.....

7th. The average amount of accounts payable, exclusive of current deposit accounts.....

Total of debts to be deducted from the above credits.....

Balance of credits to be taxed.....

Printed on margin opposite items 1st to 7th, inclusive.

These averages are obtained by adding together the amounts of each item here specified, owned or standing on the bank books, on the first Monday of each month of the year ending on the first Monday of May in any year, and dividing the same by the number of months in the year. If business has been done for less than a year, the statement and division is made on the same principle for the number of months which have elapsed since its commencement, up to the first Monday of May, 189–.

4th. The average amount of all kinds of stocks, bonds (including United States Government bonds), or evidences of indebtedness, held as an investment, or in any way representing assets.....

8th. The average amount of United States Government and other securities that are exempt from taxation.....

Total, after deducting 8th from 4th item.....

472 3d. The average amount of cash and cash items in possession or transit.....

9th. The true value in money of all furniture and other property not otherwise herein enumerated.....

Total for taxation.....

1st. Amount of capital paid in or employed in said banking business..... $

2d. And the interest of each partner is as follows, to wit:

.....

.....

.....

THE STATE OF OHIO, }
—— *County*, } ss:

I, —— ——, do solemnly swear that I am the principal manager of the banking-house and business done at —— in said county, under the name of ——; that the several amounts of notes and bills and accounts receivable by said —— and of cash and cash items, bonds, stocks and other evidences of indebtedness, possessed or held by said —— —— during the year ending the first Monday of May, A. D. 1898, and the amount of capital paid in or employed in said banking business, and the interest of each partner, are fully and correctly stated in the above statement, and that all the items of the above statement are true and just as therein set forth.

—— ——.

Sworn to and subscribed before me, a — in and for said county, this — day of —— A. D. 189–.

(Official signature) —— ——.

Unincorporated banks and bankers. Return for taxation of —— ——. ——. Located at —— Ohio. Received at county auditor's office, —— —, 189–.

—— ——,
County Auditor.

UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division. }

I, Irvin Belford, special examiner to take testimony under the 67th rule as amended and under and by virtue of a decretal
473 order in the case of The Mercantile National Bank of Cleveland, Ohio, complainant, against R. S. Hubbard as treasurer of Cuyahoga county, Ohio, respondent, pending — the circuit court of the United States within and for the northern district of Ohio, made and entered on the 11th day of August, A. D. 1898, do hereby certify that the witness, W. D. Guilbert, whose deposition appears in the foregoing pages was by me duly sworn to testify the truth, the whole truth, and nothing but the truth. That said deposition was at the request of both parties, under my direction taken

down in shorthand by Clara K. Carey a skillful stenographer, approved by both parties, and by said stenographer thereafter put into typewriting. That said depositions were read over and examined by the solicitors interested therein, and now by agreement and stipulation of counsel for said parties the signature of said witness to his testimony was waived and it was further stipulated that said deposition- so far as competent, may be read in evidence the same as if they had been duly subscribed by said witnesses.

Said depositions were taken in pursuance of notices to the solicitors for the parties to said suit as to the first day therein stated, and thereafter by adjournment and agreement of parties on the several days therein named at the office of the auditor of State, Columbus, Ohio.

That the parties were represented at the taking of said depositions by their respective counsel as set forth.

That the documentary testimony and exhibits recited, were offered in evidence and marked as specially noted in the foregoing depositions; and that I am not counsel or relative of either party or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand this 14th day of February, anno Domini, 1899.

IRVIN BELFORD,
Special Examiner.

Circuit Court of the United States in and for the Northern District of Ohio, Eastern Division.

THE NATIONAL BANK OF COMMERCE OF CLEVELAND *et al.*, Plaintiffs,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
No. —.

Deposition of G. W. Taylor, Taken by W. W. Boynton.

G. W. TAYLOR being first duly sworn according to law testified as follows:

474 Examined by Judge W. W. BOYNTON:

Q. Mr. Taylor, what relation do you sustain to the auditor of State's office?

A. Do clerical work; they call me railroad and bank clerk.

Q. And were you in June, 1897?

A. Yes, sir.

Q. You may state whether or not you are the G. W. Taylor that was elected clerk of the State board of equalization for bank shares in the year 1897?

A. Yes, sir, I am the party.

Q. Were you present at the meeting of the board convened on June 15, 1897?

A. Yes, sir.

Q. Did you make a record of the proceedings of the board?

A. Yes, sir, I did.

Q. By the record book kept by you, the following entry appears to have been made on June 15, 1897, namely, the State board for the equalization of the shares of incorporated banks met at the auditor of State's office June 15, being the third Tuesday in June. Present, his excellency Asa S. Bushnell, Hon. W. D. Guilbert, auditor of State, and Hon. F. S. Monnett, attorney general. The board organized by electing Asa S. Bushnell, president, G. W. Taylor, secretary. On motion of W. D. Guilbert, the board adjourned to meet at the call of the secretary. You may state whether or not that entry, as read, contains the action of the board on that day?

A. That was my understanding of it.

Q. Were you present when the motion was made?

A. I was.

Q. You may state whether Mr. Guilbert made the motion to adjourn, subject to a call by you.

A. That was my understanding of it and I so recorded it.

Q. By understanding you mean you so heard it?

A. Yes, sir.

Q. I further read: State board for equalization of bank shares met at office of auditor of State, in called session, September 7, 1897. Present, Honorable W. D. Guilbert, F. S. Monnett. D. A. Hollingsworth presented the case of the First National Bank of Cadiz as to the condition of assets of the bank, asking a material reduction. At the close of the entry of that day's proceedings, I find the words, "board adjourned." You may state whether that correctly represents the action taken by the board on that day?

475 A. Well, that was my own wording; that was about the substance of it.

Q. It was a final adjournment?

A. I didn't so understand it. They adjourned for various causes, time having expired, etc.

Q. That is you didn't understand the board had adjourned *sine die?*

A. No, sir.

Q. But they did not adjourn at that meeting, subject to the call of any one, as I understand it?

A. Well, I don't recall anything particular in that line excepting that they simply adjourned.

Q. You may state whether you ever called the board together yourself?

A. No, sir, I did not.

Q. I notice added to the first entry that I read to the words on motion of W. D. Guilbert, board adjourned to meet at the call of the secretary, the words, "amended to read, adjourned to meet at the call of the president of the board, Asa S. Bushnell, governor of the State." When was the language amended to read "adjourned to meet at the call of the president of the board, Asa S. Bushnell, governor of the State" put upon the record?

A. When it was put on the record? I can't tell the exact date.

Q. With reference to the last meeting?

A. It was the action of the last meeting of the board, but after that some time before it was put on record. I kept the minutes on a slip of paper, but what time they were committed to the book I don't remember.

Q. Do you mean to say that at the last meeting of the board for the year, 1897, you were directed to add to the various adjournments, the language amended to read, "adjourned to meet, etc."?

A. I can explain just what my recollection is as to that. Mr. Monnett, a member of the board, said the board had authority until its final adjournment to amend or correct any records that might appear on the book and in consideration of that they proceeded to amend these records.

Q. As appears from your amended record?

A. Yes, sir.

Q. Was any action taken with reference to the adjournment, subject to the call of the governor until the final meetings you speak of?

A. I don't recall about that, Judge.

Q. Does the record of your book of the various meetings of the board correctly represent what transpired at the meetings,
476 excepting the language "amended to read, etc.," except the amendment?

A. As nearly so as I could gather them.

Q. And the record was directed to be amended as it is amended at the last meeting of the board?

A. That is my recollection of it exactly, yes, sir.

Q. And up to that time the record correctly contained the action of the board?

(Question objected to by Attorney General Monnett.)

A. Yes, sir, as nearly as I could put it down, except adjournment was used in sense of recess, not being any final adjournment until last meeting.

Q. Was there any action taken by the board at its first meeting of June 15, directing the adjournment of the board to meet at the call of the governor?

(Question objected to by Attorney General Monnett.)

A. I think not; I don't remember that there was; only I was to notify board when all the reports were in from the banks, in that sense I was to call the board together; but the president made the official call and the meeting would be always held by his orders.

Q. Was there any action taken at the meeting of September 20, 1897, by the board relative to meeting thereafter at the call of the governor?

A. I don't remember that there was.

Q. Who introduced the subject at the last meeting of the board to make the record so that it would appear that the various meetings were to be at the call of somebody else beside yourself?

(Question objected to by Attorney General Monnett.)

A. I can't tell you that; I don't remember.

Q. Do you know how the matter came to be introduced for discussion?

A. No, I don't remember; I can't tell you distinctly about that now.

Cross-examination by Attorney General MONNETT:

Q. Mr. Taylor was there a motion made by anybody that you make the official calls of this board, or did you insert that, "subject to the call of the secretary," to accommodate your convenience as having charge of the record?

A. I can explain just how that occurred. At the first meeting Mr. Guilbert said by way of explanation of this motion, that the bank shares as they came into the office of the auditor were put into the hands of the secretary of the board, or bank clerk which position I occupied, and he would know when they were ready for a
477 meeting, when these returns were all in from the various counties, and he suggested that the secretary knowing this fact, would be a proper party to notify the board when it would be ready for another meeting.

Q. And therefore he made the motion to adjourn to the call of the secretary?

A. Well, that was my understanding.

Q. What you meant by a call was that you would simply notify the auditor that you had the subject-matter ready for a meeting and he would then proceed to issue a call, through the governor, was that all?

(Question objected to by Judge Boynton for the reason that it is an inference and argumentative.)

A. I simply understood, Mr. Guilbert explained in some detail or said that the secretary or bank clerk looked after that matter, made out statistics, prepared those things for the use of the board, and he would (*sic*) them when they would be ready for a meeting. It was my understanding that I was to notify the board when things were in shape.

Q. What is your experience, as clerk, about these reports under the statute coming in. Just state. Do they all get in by the 15th of June?

(Question objected to by Judge Boynton.)

A. There are 49 counties of the 88 in this morning, and there are more in this year than there were last at this time.

Q. So you would say by June 15th of last year there was not to exceed forty-nine counties, and the best of your recollection is that there were less?

A. I don't think there were nearly so many as that.

Q. And under the powers and duties of the board you say they cannot equalize bank shares when they have fifteen or twenty of

the eighty-eight counties in? Can they equalize before they are all in?

A. No, sir.

Q. Can you turn to the record and state when the different companies, the Mercantile national bank, the Cleveland national bank, the First national bank, the National City bank, the State national bank, the Park national bank, the Euclid Avenue national bank, the Western Reserve national bank, the Central national bank, the National Bank of Commerce, the Commercial national bank made their returns to the auditor of State?

A. We don't keep a record of that. The returns themselves are marked, or a part of them at least if not all are marked on the back of each return by the auditor of Cuyahoga county.

478 Q. They are marked received at this office July 19?

A. It would only be a matter of recollection with me when they came in.

Q. Can you get those original reports and also the day when they reached your office?

A. No, sir.

Q. Can you state whether under sec. 2808 R. S. at the first meeting of the board referred to in your testimony, or whether at any time in June of that year, the defendant banks above named made returns through the county auditor of Cuyahoga county, or in any other way of the value of the said shares as fixed by the county auditor of Cuyahoga county, or whether such auditor had made such report to the State auditor. Give us the facts on the matter of the reports of these different banks as fully as you can, taking them up in order.

A. There was no return made at all in the month of June by any of the defendant banks; no return to the State auditor's office through the auditor or in any other way.

Q. When was the first, to the best of your recollection refreshing your memory from the dates on the report, that they could possibly have been in *in* the auditor's office.

(Question objected to by counsel for plaintiff.)

A. The date appearing here is that at which the auditor of Cuyahoga county made the returns or equalized them, July 19, 1897. My personal recollection is that it was somewhere near the first of August when these returns reached the auditor's office.

Q. From auditor of Cuyahoga county?

A. Yes, sir.

Q. So that in the meeting of June 15th, or any meeting that was made by the board in June, the plaintiff banks reports were not before the board to act upon?

A. No, sir, they were not.

Q. Were there any other banks of the State that were to be equalized and to be compared with these, outstanding at that date or later?

(Question objected to by counsel for plaintiff.)

A. My impression is that more than one-half of the banks of the State were out on the third Tuesday of June. But there were some few other counties—I can only recall one now by name—that were later than this. I recall Erie county which did not come in until some time in August.

Q. Under sec. 2809 where said board is required to hear complaints and equalize the value of said shares, with the limita-
479 tion that said board shall not increase or reduce the grand aggregate value of said bank shares as returned by the several county auditors by more than 20 per cent. and the other provisions of that section, was there any way in which the board could comply with that statute prior to the plaintiff banks getting their reports in?

(Question objected to by counsel for plaintiff as being question of law.)

A. Have you any other means of getting the information than from getting these reports in through the various county auditors?

A. No, sir. My own opinion is that they couldn't be equalized until they get their bank returns, and had been received at their office.

Q. How many banks are there in the State for that board to consider and hear complaints about?

A. About 430.

Q. And you may state whether the same board, or any members of that board, have other duties during the months of June to December that occupies their time and prevents their giving their whole undivided attention to these four hundred banks?

(Question objected to by counsel for plaintiff.)

A. They have.

Q. Are they not members of many other boards?

A. Yes, sir.

Q. And have their respective duties as such officers of State?

(Question objected to by counsel for plaintiff.)

A. I might say that that was one of the features of the trouble; that it was impossible for us to get this board's attention because of their duties. They couldn't come just at the beck and call of this board, and the delay of the reports coming in was the great difficulty in making this equalization.

Q. Did any of the plaintiff banks file any complaints at any time under sec. 2809 with this board from June until December until they were certified back under the statute?

A. I don't remember about that. There were two banks I believe from Cleveland, but they were not defendant, the South Cleveland Banking Company and another minor bank, filed objections and asked for hearing.

Q. You may state whether an opportunity was given each and all of these banks to be still further heard before this board and they refused to come before the board, claiming we had adjourned *sine die*, through their counsel, when called upon by the auditor.

480 A. There was a delegation from these banks, five or six persons, and the board offered to hear their complaints and I believe a day was fixed if I remember right.

Q. And nobody came?

A. No, sir.

Q. And didn't they state they were going into court with it and stayed away?

A. That was my understanding, that they were all preparing and possibly had, to fight the case, or something to that effect.

Q. They refused to concede that the board had authority to hear their complaint after June 15, the day originally set for hearing? Wasn't that their statement?

(Question objected to by counsel for plaintiff.)

A. I heard that talked of, but I can't remember just how it was.

Q. Did the board not also tell them that under sec. 167 of the Revised Statutes which provides that the State auditor may remit taxes and penalties that he ascertains to have been erroneously or illegally assessed, and such penalties as have accrued or may accrue, in the consequence of the negligence or error of the officer of the board, provided when the amount to be remitted in any case shall exceed one hundred dollars, that he shall take to his assistance the governor and the attorney general, and that each and all of these plaintiffs banks refused, through this committee, to take advantage of the remedy herein provided?

A. Yes, sir, they were offered the opportunity at that meeting, and while they didn't absolutely refuse there, they did refuse by not availing themselves of the privilege of coming. They were notified they had the privilege; I remember that distinctly.

(Answer objected to by counsel for plaintiff.)

Q. Can you furnish to the stenographer, and make it a part of your testimony, or is it officially published the ratio of values on the plaintiff bank shares of stock as compared with other banks of the State?

A. The figures are all published; the rate is not. It could be furnished.

Q. You can furnish for the court, can you so far as the values relative to the State's grand duplicate is concerned, the plaintiff bank shares as compared with the shares of the other banks of the State?

A. Yes, sir, I can. Do you refer to the county auditor or the valuation that was finally fixed by the State board?

Q. By the State board. I wish you would furnish as a part
481 of your testimony and as Exhibit A on cross-examination, a tabulated statement of the values of all the banks in the State as found by this board at these various meetings and returned to the county auditor, and also the sworn values of these plaintiff banks as made to the comptroller at the same time, as near as you can and make it a part of your testimony.

A. Yes, sir, I can and will attach it to my testimony as a part of the same.

Q. Are you familiar as an attaché or officer of the auditor of State's office with the values of personal and real property in the State and moneyed capital in the hands of citizens of the State?

A. I am not sufficiently familiar to testify concerning those matters.

Q. Are you familiar as bank clerk of the auditor of State's office with the value placed upon bank shares of the private and national banks of Ohio for the year 1897?

A. Not of private banks.

Q. Are you of incorporated banks?

A. Yes, I have some familiarity with those banks.

Q. Have you been a banker yourself in Ohio?

A. Yes, sir.

Q. How many years?

A. Eight or nine.

Q. Prior to going into the auditor's office?

A. Yes, sir.

Q. How long have you been in the auditor's office?

A. Since January 1896.

Q. Were the values fixed by this board of plaintiff bank shares of stock greater than is assessed upon moneyed capital in the hands of citizens or individuals, or upon other bank shares of the State?

(Question objected to by counsel for plaintiff.)

A. I think not of the banks. As I said before, I am not so familiar with the values of other property.

Q. Was there any discrimination against the affairs of these national banking associations as against the other banks of the State?

(Question objected to by counsel for plaintiff.)

A. I think not.

Q. What is the fact as to the Cleveland valuation for the last two years, including this year being greater or less than other banks of the State?

(Question objected to by counsel for plaintiff.)

A. It was below the average.

Q. Below the average of other bank shares?

A. Yes sir, of incorporated bank shares.

482 Q. As a banker and citizen what do you know of the value of those bank shares in money, as to whether they have been assessed greater or less than the true value in money?

(Question objected to by counsel for plaintiff.)

A. By the returns made through the county auditor, as I said above, they were below the average of the banks in the aggregate.

Q. What deductions do they make to the county auditor as between what they return to the Comptroller of the Currency of the Federal Government and as to what they return to the county audi-

tor; what system of deduction do they adopt and what did they adopt in this case?

(Question objected to by counsel for plaintiff.)

A. I don't know that I could make a statement as to that. The deductions were quite large in many cases from their surplus and undivided profits as returned to the county auditor and as returned to the Comptroller of the Currency. I have the figures, or did have, in my drawer.

Q. That will appear in your tabulated statement that you will make?

A. I can make it so.

Mr. MONNETT: Please do so.

Q. How do they make the great difference in their sworn report to the Comptroller of the Currency and the report that is made to the county auditor of Cuyahoga county? Just explain to the court what deductions they make under the two classes of reports?

(Objected to by counsel for plaintiff as incompetent.)

A. I don't know that I understand you, Mr. Monnett, exactly.

Q. Let me make it plain. Do they make a greater or less return to the Federal Government from what they return to the State?

A. It is quite a great deal larger to the Comptroller of the Currency than to the county auditor.

Q. On substantially the same data?

A. Practically so.

Q. What system of deductions do they make when they return to the county auditor for deductions, to make that difference in value? Just state what item they deduct from any — their resources or what they had in their liabilities?

A. They deduct from their surplus and undivided profits, but as to the system they use, I only know of that as they undertook to explain it to the board when they were here last winter. There was a committee down here.

Q. Do you know any of the men that were here?

483 A. I can give you the names of some of them. Mr. Caldwell, of Commercial; Mr. Sullivan, of the Central; Bourne, of Union nat'l; Rittman, of Bank of Commerce.

Q. That committee called on the board in the fall or early winter of 1897, and demanded certain deductions be made, did they not, and explained how they were to be deducted and what those reductions were?

A. Their claim was an effort to substantiate their returns to the auditor of Cuyahoga county.

Q. How did they harmonize the matter of discrepancy between the report to the Federal and State? Just explain that to the court.

A. I don't know that I can. I believe Mr. Wilson said, in talking that over, that they took off a certain per cent.

Q. For what?

A. For what they considered poor paper and from real estate they took a certain amount.

Q. That is they took the entire capital stock, took an arbitrary per cent., five per cent., was it not, in some instances, as stated by Mr. Sullivan, and estimated that there was 5 per cent. of the entire capital stock represented in bad paper?

A. I don't remember whether it was Mr. Sullivan or Mr. Wilson. There was a statement like that made. They said in effect that they had a uniform understanding as to deduction that was in substance what they said, and they were all acting in concert in making this fight. That is the understanding they left with the board and myself.

(Answer objected to by counsel for plaintiff.)

Q. I wish you would explain, Mr. Taylor, to what they —

A. They were entitled to certain reductions on real estate.

Q. Explain that so the court will understand it.

A. Some one of them said, if I remember right, that there was much of the real estate not valued over 33 to 40 per cent., and that some held property that they considered too high and took off accordingly.

Q. There was a real-estate account of so much in these returns, giving amounts?

A. Yes, sir.

Q. That was on the tax duplicate in Cuyahoga county at a much less amount. To illustrate: The 40 per cent. of what they carried on their bank book, the difference between the 40 per cent. on the tax duplicate and 100 per cent. that they returned it at in their Federal report, they wanted that 60 per cent. deducted from their assets in addition to taking off the real estate?

484 A. I don't remember that they specified any particular per cent., but they wanted a large reduction because of that. I remember the auditor called attention to the law.

Q. In addition to that these banks insisted on deducting the difference of their book value of the real estate from their assets as listed, did they not?

(Question objected to by counsel for plaintiff.)

A. I don't know that they said book value. They had some rate by which they reduced that; I don't remember the amount. The talk was kind of general. The returns from some said 35 or 40; they had these marked down. I don't remember that they agreed on any certain per cent.

Q. When the board deducted from the returns of these banks from real estate, as it appears upon the tax duplicate, did they deduct from the bank real-estate account all that they carried it at on their books from real-estate account?

A. That is done by the auditor on the back of the report, that is the duplicate value is deducted in his return here and if he failed to do so and it was reported to this board, it was deducted.

Q. What did these plaintiff banks in their committee demand to have deducted in addition to the duplicate value?

(Question objected to by counsel for plaintiff.)

A. They claimed that they were carrying real estate that was not worth what they were carrying it at and they undertook to reduce the values themselves independent of this duplicate valuation.

Q. Do any of the other banks of the State in which this board equalizes under the statute, ask for that reduction or deduction?

(Question objected to by counsel for plaintiff.)

A. They haven't to the knowledge of the secretary.

Q. In making up the returns for equalization of bank shares is that deduction made for any of the other banks as required and requested by these banks?

(Question objected to by counsel for plaintiff.)

A. No, sir.

Q. Do any of the other banks of the State that are equalized with these banks, make horizontal deductions by a per cent. for bad paper, or are they required to specify what their bad paper consists of as a rule?

(Question objected to by counsel for plaintiff.)

A. We have no knowledge of anything of that sort at all. There has been no claims of that sort made by any other bank.

485 Q. Don't these plaintiff banks demand elements of reduction, such as you have named, that no other bank in the State demands?

(Question objected to by counsel for plaintiff.)

A. That is my understanding of it.

Q. Do you know anything about the valuation of the tax duplicate of Cuyahoga county as compared with the other eighty-eight counties where the other banks are situated? Whether it is higher or lower?

(Question objected to by counsel for plaintiff.)

A. I don't know as to other property.

Redirect examination by Judge BOYNTON:

Q. How early in 1897 were all the banks' returns made from the various county auditors of the State?

A. I couldn't answer as to time, Judge. It is only my personal recollection. I don't know but it was some time in August, if my recollection is right, that we telegraphed to Erie County people, but I couldn't give you date.

Q. Were they all in by the first of September?

A. Let me look at my record book here to refresh my memory before I answer that question, because from personal recollection I couldn't say. (Witness examines his record.) Well, I would suppose they were in by September. It is, however, more of a supposition than anything. They were slow about coming in.

Recross-examination by Mr. MONNETT:

Q. In the annual statement of the plaintiff, Commercial National Bank, it appears from the official files of the auditor of Cuyahoga county that its report was not filed in that county until June 15, 1897. Is that statement on the back the date when they were received by that auditor?

(Question objected to by counsel for plaintiff.)

A. It is not our stamp.

Q. These dates and stamp were on these papers when they were received at the auditor of State's office and it is right under "Received at county auditor's office, June 15, 1897"?

A. Yes, sir.

(Question objected to by counsel for plaintiff.)

Q. That same date of June 15, 1897, also appears on the returns of the annual statement to the auditor of Cuyahoga county of the Mercantile national bank, Cleveland national bank, Central
486 national bank, State national bank, and of the National Bank of Commerce, marked June 16, 1897?

(Question objected to by counsel for plaintiff.)

A. These dates were on the returns when they were received at the auditor of State's office at a later date than this.

Q. That is the condition they were received in your office?

A. Yes, sir.

Q. And they were not received in your office prior to the first of August to the best of your recollection?

—. Somewhere near that time.

Q. And when the board did pass upon these, waiving all question as to how the board was called together, the governor, auditor, attorney general, were they all present?

A. They were all present at that first meeting.

Q. These were all considered carefully, with testimony, before the value was fixed?

(Question objected to by counsel for plaintiff as leading.)

A. Yes, sir.

Q. The plaintiffs alleged in their petition that the owners of the share- of stock as set forth in their petitions, each have personal or individual indebtedness that is equal to, or greater, than their respective shares of stock and are praying to have their individual debts offset against their valuation. Do any of the stockholders in any other cities, or any other banks or national banks of this State adopt that rule to your knowledge?

(Question objected to by counsel for plaintiff.)

A. Not to my knowledge.

Q. Not considered as a credit by any taxing officer in the eighty-eight counties for the purpose of offsetting debt?

(Question objected to by counsel for plaintiff.)

A. Don't know of any. They are the sole exception so far as we know.

(*Question* objected to by counsel for plaintiff.)

487 *Report of the Condition of the Mercantile National Bank, at Cleveland, in the State of Ohio, at the Close of Business July 23, 1897.*

Resources.

Loans and discounts		$2,257,680 24
Overdrafts, secured and unsecured		4,369 93
U. S. bonds to secure circulation		470,000 00
Premiums on U. S. bonds		18,000 00
Stocks, securities, etc		60,500 00
Banking-house, furniture and fixtures		255,000 00
Due from national banks not reserve agents		102,869 55
Due from State banks and bankers		33,776 92
Due from approved reserve agents		445,805 43
Checks and other cash items		4,121 87
Exchanges for clearing-house		10,069 34
Notes of other national banks		53,947 00
Fractional paper currency, nickels & cents		691 35
Lawful money in bank, viz:		
Specie	$312,400 00	
Legal-tender notes	50,000 00	
		362,400 00
Redemption fund with U. S. Treas. (5 per cent. of circulation)		21,150 00
Total		$4,100,381 63

Liabilities.

Capital stock paid in	$1,000,000 00
Surplus fund	200,000 00
Undivided profits, less expenses and taxes paid	94,254 77
National bank notes outstanding	363,000 00
Due to other national banks	54,374 71
Due to State banks and bankers	6,970 14
Individual deposits subject to check	2,072,629 91
Demand certificates of deposit	7,420 72
Cashier's checks outstanding	1,731 38
Liabilities other than those above stated, U. S. bond account	300,000 00
Total	$4,100,381 63

Exhibit "Table XI," "statement of the valuation of national banks as returned to and fixed by the State board of equalization of bank shares for 1897," has been incorporated in this Record in volume II, page 36*a*, and reference is hereby made thereto.

Statement of Valuation of State Banks, as Returned to and Fixed by the State Board of Equalization of Bank Shares for 1897.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditor, exclusive of real estate.	Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
Farmers'	Manchester	Adams	$31,000	$141	$947	$32,088	$12,460	$12,460	$6,140	$18,600
Metropolitan	Lima	Allen	27,000	14,000	1,049	42,049	25,452	25,452	2,580	28,032
Commercial	Delphos	"	50,000	10,500	4,333	64,833	41,998	41,998		41,998
Conneaut Mut. L'n.	Conneaut	Ashtabula	80,000	7,000	2,851	89,851	42,963	11,963	46,887	58,850
Ashtabula Co	Ashtabula	"	50,000	7,471	4,952	62,423	56,572	34,772	5,851	40,623
Orwell Co	Orwell	"	25,000		405	25,405	24,196	15,396	1,209	16,605
Geneva Savings	Geneva	"	25,000		355	25,355	23,836	14,836	1,519	16,355
Howe Co	Wapakoneta	Anglaize	24,000	10,000	1,454	45,454	28,310	28,310		28,310
Dollar Savings	St. Clairsville	Belmont	19,600			19,600	11,300	11,300		11,300
People's Savings	Martin's Ferry	"	25,000	5,000	508	30,508	17,690	17,690	2,780	20,470
Dollar Savings	Bridgeport	"	50,000		853	50,853	29,080	29,080	3,120	32,200
Dollar Savings	Bellaire	"	50,000	5,000	3,139	58,139	33,360	33,360	3,310	36,670
Oglesby & Barnitz	Middletown	Butler	50,000		25,299	75,299	48,300	48,300	650	48,950
Farmers'	Mechanicsburg	Champaign	100,000	14,500	155	114,655	72,000	72,000	7,150	79,150
J. P. Cummings	Carrollton	Carroll	30,000	2,500	1,699	34,199	19,820	19,820	1,180	21,000
H. A. Thompson	Salineville	Columbiana	25,000	1,150	5,045	31,195	17,676	17,676	1,040	18,716
489 Commercial	Coshocton	Coshocton	50,000	7,000	968	57,968	38,646	38,646		38,646
Br'dw'y Sav. & L'n	Cleveland	Cuyahoga	300,000	90,000	9,198	399,198	212,630	212,630	36,220	248,850
Clevel'd S. & B. Co.	"	"	50,000		1,011	51,011	24,780	29,780		29,780
Chagrin Falls	Chagrin Falls	"	25,000	2,500	478	27,978	12,950	14,450	1,720	16,170
Cleveland Trust Co.	Cleveland	"	500,000	30,000	37,648	567,648	324,720	354,720		354,720
Cuyah'a B. & S. Co.	"	"	50,000		3,029	53,029	27,120	30,120		30,120

Table XII—Continued.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditor, exclusive of real estate.	Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
Col'mb'a S. & L. Co.	Cleveland.....	Cuyahoga....	$50,000	$4,000	$6,323	$60,323	$31,500	$34,500	.....	$34,500
Detr't St. S. & L. Co.	"	"	50,000	.....	4,878	54,878	28,380	31,380	.....	31,380
Dime S. & B. Co.....	"	"	300,000	.....	678	300,678	172,730	211,730	$1,660	213,390
East End S. & B. Co.	"	"	200,000	15,000	11,408	226,408	113,820	151,820	8,010	159,830
Euclid Ave.S.& B.Co.	"	"	200,000	3,000	6,845	209,845	114,540	121,040	1,000	122,040
Forest City S.& B.Co.	"	"	50,000	2,000	25,000	77,000	37,630	52,630	3,990	56,620
Garfield S. & B. Co..	"	"	50,000	.....	226	50,226	30,000	33,500	.....	33,500
Ger. Am. S. & B. Co.	"	" ...	50,000	.....	2,246	52,246	27,470	29,970	1,080	31,050
Guardian Trust Co..	"	"	450,000	.....	.....	450,000	270,000	330,000	.....	330,000
Lake Shore B.& S.Co.	"	"	100,000	1,200	2,867	104,067	54,840	60,340	.....	60,340
Lorain St. Sav. Co...	"	"	50,000	.....	12,562	62,562	33,720	48,220	.....	48,220
Marine Bank Co....	"	"	200,000	11,000	589	211,589	118,530	122,330	3,950	126,280
Mer. B. & Stor. Co..	"	"	224,000	.....	.....	224,000	75,900	75,900	57,700	133,600
Pearl St. S. & L. Co.	"	"	50,000	7,000	1,128	58,128	28,740	40,740	200	40,940
Prod. Ex. Bkg. Co..	"	"	100,000	15,000	4,703	119,703	52,740	59,240	11,500	70,740
South Clev. B. Co...	"	"	150,000	.....	28,010	178,010	83,380	83,380	11,830	95,210
United B. & S. Co...	"	"	100,000	.....	.....	100,000	53,270	53,270	2,810	56,080
Wade Park B. Co....	"	"	100,000	9,000	6,369	115,369	51,240	51,240	14,300	65,540
W. Cleveland B. Co.	"	"	38,892	.....	687	39,579	15,550	22,550	5,090	27,640
Wick B. & T. Co....	"	"	250,000	2,000	2,010	254,010	147,600	152,400	.....	152,400
W'dl'd Av. S. & L. Co.	Cleveland.....	Cuyahoga....	250,000	57,500	11,039	318,539	176,100	176,100	11,670	187,770
Farmer & Mt. B. Co.	Arcanum.....	Darke	24,000	4,500	1,401	29,901	20,000	20,000	.....	20,000
Greenville Bank Co.	Greenville.....	"	62,500	5,000	1,846	69,346	48,175	48,175	.....	48,175
Deposit " "	Delaware.....	Delaware....	50,000	10,097	8,077	68,274	43,520	43,520	6,480	50,000
Delaware S'v'gs Co..	"	"	25,000	6,000	3,164	34,164	24,140	24,140	1,360	25,500

Berlin Hts. Bk. Co.	Berlin Heights.	Erie	50,000	2,000	5,990	57,990	34,434	34,434	360	34,794
Erie Co.	Vermillion	"	50,000	1,600	2,263	53,863	31,757	31,757	560	32,317
Capitol City S'v'gs.	Columbus	Franklin	60,000		10,527	70,527	44,850	44,850		44,850
Citizens' "	"	"	100,000	75,000	11,312	186,312	80,500	80,500	36,000	116,500
Columbus S'v'gs.	"	"	50,000	10,000	1,748	61,748	29,140	29,140	9,600	38,740
490 East End Savings	Columbus	Franklin	25,000		5,740	30,740	16,750	16,750	3,230	19,980
Market Exchange	"	"	25,000		67	25,067	16,300	16,300		16,300
Ohio Savings	"	"	25,000		4,711	29,711	19,310	19,310	21	19,331
State S. B. & T. Co.	"	"	100,000		47,757	147,757	90,480	90,480	3,120	93,600
Westerville	Westerville	"	30,000	900	865	31,765	18,740	18,740	800	19,540
People's	Jamestown	Greene	30,000		111	30,111	19,540	19,540	860	20,400
Osborn	Orborn	"	18,000	2,050	5,844	25,894	19,800	16,800		16,800
Citizens'	Yellow Springs.	"	20,000		854	20,854	14,000	14,000	100	14,100
City Hall	Cincinnati	Hamilton	100,000	5,260	3,538	108,798	64,870	64,870		64,870
North Side	"	"	25,000	755	1,537	27,292	15,820	15,820		15,820
Western German	"	"	200,000	325,000	20,227	545,227	309,280	309,280	19,990	329,270
Ada Savings	Ada	Hardin	12,500	4,500		17,000	10,200	10,200		10,200
Kenton Savings	Kenton	"	100,000	20,000	1,953	121,953	73,172	73,172		73,172
Wright	Bellevue	Huron	25,000	4,000	1,929	30,929	18,606	18,606		18,606
Greenwich	Greenwich	"	25,000	7,500	1,354	33,854	15,936	15,936	4,590	20,526
Huron Co. Bk. Co.	Norwalk	"	43,000	15,000	4,266	62,266	33,204	33,204	4,400	37,604
Norwalk Savings	"	"	50,000	10,000	5,500	65,500	35,246	35,246	3,560	38,806
Wakeman Bk. Co.	Wakeman	"	25,000		1,201	26,201	15,694	15,694	550	16,244
Knox Co. Savings	Mt. Vernon	Knox	25,000	5,000	2,110	32,110	17,568	17,568	2,830	20,398
Dollar "	Painesville	Lake	50,000	18,600	678	68,678	36,000	36,000	9,000	45,000
491 Exchange	Madison	Lake	50,000		1,942	51,942	30,000	30,000	2,770	32,770
Farmers' Co.	West Liberty	Logan	15,000	371	634	16,005	10,576	10,576		10,576
Lorain Co.	Elyria	Lorain	50,000	3,000	443	53,443	32,210	32,210		32,210
Savings Deposit	"	"	200,000	20,000	3,376	223,376	127,853	127,853	6,027	133,880
Citizens' Savings	Lorain	"	50,000	17,000	2,712	69,712	36,120	36,120	3,140	39,260
Lorain "	"	"	50,000	7,000	1,951	58,951	31,700	31,700	2,300	34,000
Penfield Av. S'v'gs.	"	"	25,000		1,748	26,748	12,564	12,564	2,660	15,224
Oberlin Co.	Oberlin	"	25,000	5,000	1,427	31,427	15,600	15,600		15,600
Home Savings	Wellington	"	25,000	429	2,908	28,337	14,620	14,620	1,450	16,070
East Side	Toledo	Lucas	30,000		10,829	40,829	23,650	23,650	1,680	25,330
Home Savings	Toledo	Lucas	250,000		39,509	289,509	172,993	172,993		172,993
M'ch'ts' & Clerks'	"	"	150,000	80,000	5,376	235,376	127,157	127,157	15,240	142,397
Ohio S. & T. Co.	"	"	150,000		2,575	152,575	89,500	89,500		89,500

2003

Table XII—Continued.

Name of bank.	City.	County.	Capital stock.	Surplus.	Undivided profits.	Total.	Value fixed by county auditor, exclusive of real estate.	Value fixed by State board, exclusive of real estate.	Assessed value of real estate.	Aggregate value fixed.
Toledo S. & T. Co	Toledo	Lucas	$100,000	$175,000	$12,040	$287,040	$148,534	$148,534	$23,690	$172,224
Union S. & T. Co	"	"	250,000	.....	21,227	271,227	148,526	148,526	14,210	162,736
Dollar S. & T. Co	Youngstown	Mahoning	300,000	.....	.....	300,000	172,910	172,910	7,000	180,000
Farmers' D. & S.	Poland	"	100,000	.....	4,540	104,540	61,980	61,980	740	62,720
Fahey Banking Co.	Marion	Marion	245,300	.....	3,091	248,391	159,445	159,445	.....	159,445
Farmers' & Mech	"	"	200,000	12,000	5,740	217,740	120,250	120,250	15,000	135,250
Marion County Co.	"	"	236,100	7,791	1,134	245,025	151,125	151,125	3,600	154,725
Savings Deposit	Medina	Medina	25,000	1,650	1,960	28,610	17,000	17,000	3,000	20,000
Ohio S. D. & T. Co.	Dayton	Montgomery	50,000	627	1,449	52,076	36,452	36,452	.....	36,452
Citizens'	McConnelsville	Morgan	140,000	4,700	224	144,924	71,060	67,560	26,940	94,500
"	Celina	Mercer	42,500	196	.....	42,696	21,330	21,330	3,670	25,000
Monroe	Woodsfield	Monroe	50,000	.....	2,716	52,716	18,770	18,770	6,230	25,000
Citizens'	Cardington	Morrow	25,000	1,200	1,205	27,405	17,445	17,445	1,305	18,750
Ohio S. D. & T. Co.	Zanesville	Muskingum	17,000	742	1,803	19,545	6,572	6,572	4,340	10,912
People's Savings	"	"	50,000	12,500	.....	62,500	35,928	35,928	.....	35,928
Oak Harbor State	Oak Harbor	Ottawa	25,000	4,061	2,311	31,372	17,900	17,900	200	18,100
German-American	Port Clinton	"	25,000	1,540	3,705	30,245	15,590	15,590	1,330	16,920
Farmers'	Paulding	Paulding	18,750	.....	1,946	20,696	10,250	10,250	1,000	11,250
Paulding Deposit	"	"	25,000	.....	2,120	27,120	13,600	13,600	1,400	15,000
Perry Co. C	New Lex'gton	Perry	50,000	10,000	3,347	63,347	34,800	34,800	2,520	37,320
Somerset	Somerset	"	15,000	1,417	10,531	26,948	16,660	16,660	.....	16,660
Union Co.	New Holland	Pickaway	25,000	300	209	25,509	15,300	15,300	.....	15,300
Mansfield	Mansfield	Richland	100,000	28,500	5,024	133,524	91,350	85,850	2,120	87,970
Savings	Mansfield	Richland	100,000	20,000	543	120,543	75,320	72,820	9,060	81,880
Citizens'	Shelby	"	60,000	2,500	4,267	66,767	45,410	41,410	1,330	42,740

Savings	Chillicothe	Ross	25,000		24,910	49,910	27,136	27,136	2,810	29,946
Scioto Valley	Kingston	"	30,000	9,000	847	39,847	23,228	23,228	680	23,908
Crogan Bk. & Svg. Co.	Fremont	Sandusky	25,000	3,500	1,965	30,465	16,200	16,200	2,080	18,280
Fremont Savings	"	"	50,000	11,000	4,175	65,175	37,210	37,210	1,890	39,100
Gibsonburg Bk. Co.	Gibsonburg	"	20,000		5,435	25,435	13,470	13,470	1,790	15,260
People's	Clyde	"	25,000	3,000	798	28,798	16,600	16,600	680	17,280
Central Savings	Portsmouth	Scioto	30,200	3,000	2,832	36,032	22,300	22,300		22,300
Mechanics' Savings	Fostoria	Seneca	25,000		1,584	26,584	16,400	16,400		16,400
Commercial	Tiffin	"	100,000	20,000	20,609	140,609	79,970	79,970	11,430	91,400
Tiffin Savings	"	"	50,000	2,850	2,926	55,776	31,880	31,880	3,850	35,730
Alliance	Alliance	Stark	70,000	7,000	10,219	87,219	41,980	41,980	14,710	56,690
City Savings	"	"	50,000	8,000	1,652	59,652	31,830	31,830	6,940	38,770
Central Savings	Canton	"	100,000		39,158	139,158	69,800	69,800	20,650	90,450
Dime "	"	"	50,000	900	1,106	52,006	34,800	33,800		33,800
Farmers'	"	"	50,000		5,395	55,395	30,140	30,140	5,870	36,010
Geo. D. Harter	"	"	180,000	47,200	15,042	242,242	144,090	144,090	13,370	157,460
People's Savings	"	"	50,000	12,000		62,000	38,240	38,240	2,060	40,300
Masillon Savings	Massillon	"	49,500		3,165	52,665	34,230	34,230		34,230
493 Minerva	Minerva	Stark	17,400	1,740	707	19,847	8,140	8,140	4,760	12,900
Akron Savings	Akron	Summit	200,000			200,000	87,300	85,300	44,700	130,000
People's "	"	"	50,000	15,000	5,683	70,683	46,650	44,650		44,650
Barberton	Barberton	"	50,000	2,825	2,003	54,828	36,180	36,180		36,180
Hubbard	Hubbard	Trumbull	50,000	5,641	7,239	62,880	40,245	40,245	630	40,875
Kinsman	Kinsman	"	12,500		6,513	19,013	13,360	13,360		13,360
Warren Savings	Warren	"	100,000		19,754	119,754	77,840	77,840		77,840
Farmers'	Marysville	Union	30,000	2,200	659	32,859	18,088	18,088	2,770	20,858
Marysville	"	"	60,000	10,000	1,223	71,223	41,142	41,142	6,080	47,222
Union	"	"	36,000	4,000	954	40,954	26,554	26,554		26,554
Montpelier Banking & S. S. Co	Montpelier	Williams	25,000		2,643	27,643	13,215	13,215	3,370	16,585
Commercial	Bowling Green	Wood	75,000	4,000	1,097	80,097	46,010	46,010	1,990	48,000
Hardy	N'th Baltimore	"	50,000		4,107	54,107	32,465	32,465		32,465
Citizens'	Perrysburg	"	25,750	342		26,092	15,180	15,180	470	15,650
"	Weston	"	30,000	700	1,145	31,845	19,107	19,107		19,107
Total			$11,220,492	$1,457,046	$751,621	$13,429,159	$7,558,601	$7,729,601	$681,179	$8,410,780

494 Endorsements on part fourth.

Part fourth. Mercantile National Bank, *et al.*, *vs.* R. S. Hubbard, treasurer. Filed Feb. 15, 1899. Irvin Belford, clerk U. S. circuit court, N. D. O.

Exceptions by Plaintiff to Master's Report, etc.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant,
vs.
R. S. HUBBARD, Treasurer of Cuyahoga County, Ohio.

Exceptions by plaintiff to master's report and motion for judgment.

Now comes the complainant and excepts to the report made herein by Irvin Belford, special master of this court, to whom this cause was referred by an order of the court made and entered on the 6th day of Sept., 1898, in the following particulars:

First exception. For that the said master in his said report found that there was not sufficient evidence to show what portion of credits consists of moneyed capital in the hands of individuals which in fact enters into competition with business with the national banks, and that there was no evidence as to what the total moneyed capital in the hands of individual citizens, and included in the term credits, amounts to; and that he was, therefore, unable to report whether there has or has not been any material discrimination such as the Federal statute was enacted to prevent, against said complainant and in favor of other moneyed capital in the State outside of Cuyahoga county, because complainant says that the evidence found on pages 30 and 31 of the Record of the evidence filed in said case by said master, shows that the value of all credits after deducting all *bona fide* debts for the year 1897 in the State, *were* $99,227,416. That all moneys invested in bonds, stocks, joint stock companies, annuities or otherwise, in the State for that year only amounted to $7,611,124. And the testimony further shows, at page 45 of the Record, that the individual deposits in banks of the State for the year 1897
495 amounted to $50,422,444.55, all of which were debts due from banks which the statute authorizes to be taken from credits.

The testimony further shows, page 131, of the record, that the obligations due national banks of Ohio for the year 1897, were $118,820,000, and loans and discounts of State banks amounted to over $110,000,000, all of which were evidenced by obligations which the statute authorizes to be deducted from credits in fixing their value for taxation. It further appears from the evidence, page 43 of the record, that building and loan associations for the year 1897 loaned out for interest, money to an amount exceeding $60,000,000, and that the capital so invested was in direct competition with that invested in national bank shares; that the shares of building and loan associations to the extent money is loaned upon them, are exempt from taxation while all other shares are taxed as credits.

It further appears from former adjudications in this court in case of the plaintiff against the predecessor of the defendant, that credits

from which debts may be deducted under the laws of Ohio in determining the valuation of the former for taxation, are sufficient in amount and in character to create a discrimination against capital invested in national bank shares forbidden by the act of Congress defining the conditions on which national bank shares may be taxed and for which no provision is made by the laws of Ohio relating to the valuation of national bank shares.

It further appears, inferentially from the evidence, on page 42 of the record of the evidence, that there was in 1897 more than $200,000,000 of moneyed capital in the hands of individual citizens of the State invested in interest-bearing promissory notes made and owned in the State of Ohio secured by mortgage, which money so invested comes directly in competition with capital invested in national bank shares.

Exceptions to Conclusions of Law.

The complainant excepts to the conclusions of law of the master relating to the former adjudication. First, that the question of the right to deduction of debts from the value of national bank shares was not a fact or right directly involved in said adjudication and that such fact was not decided and carried into such former judgment. On the contrary thereof such fact and right were directly involved in the issue and directly decided in such former adjudications. Second, that said shareholders are not entitled to said
496 deductions asked for in the bill of complaint; on the contrary thereof from the finding of facts as made by the master as well as from the evidence referred to in the above exceptions to the findings of fact such shareholders are entitled to said deductions.

The complainant moves for judgment and decree on the findings of the master in its favor and on the finding of facts relating to the former adjudication of the question in issue, and on the findings of the master and the evidence as to all other issues.

W. W. BOYNTON &
N. T. HORR,
Solicitors for Complainant.

Endorsements on exceptions of plaintiff.

5714. The Mercantile Nat'l Bank of Cleveland, *vs.* R. S. Hubbard, treas. of Cuyahoga county, Ohio. Exceptions by compl't to master's report and motion for judgment. Filed Nov. 13, 1899. Irvin Belford, clerk U. S. circuit court, N. D. O. W. W. Boynton & N. T. Horr, sol's for compl't.

Stipulation as to Trial of Cases.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Respondent.
} Stipulation. No. 5714.

The complainant, The Mercantile National Bank of Cleveland, Ohio; The Cleveland National Bank; The Central National Bank; The Commercial National Bank; The Euclid Avenue National Bank; The First National Bank; The National Bank of Commerce; The National City Bank; The Park National Bank of Cleveland; The State National Bank; The Union National Bank, and The Western Reserve National Bank, all complainants in certain actions now pending in said court, involving the same questions regarding the validity of the taxing of the bank shares of each of said complainant banks for the year 1897, here stipulate and agree, by themselves and their counsel, with said defendant and his counsel,
497 that the questions involved in said actions may be litigated and determined in the action of The Mercantile National Bank of Cleveland, Ohio, and the remaining actions, above named, shall not be further prosecuted but the same shall abide the judgment, similar judgments to be entered therein, that may be finally rendered in the above case of the Mercantile National Bank.

It is further agreed that this stipulation, be, by the court entered upon the journal thereof, as by agreement.

Dated, October 27th, 1899.

W. W. BOYNTON &
N. T. HORR,
Attorneys for All Defendants, Except Euclid Ave., Central and Western Reserve Banks and State.
WEBSTER & COOK,
Att'ys for Euclid Avenue National, State National, and Central National Banks.
HOYT, DUSTIN & KELLEY,
For Western Reserve,
Attorneys for Complainants.

F. S. MONNETT,
Att'y General,
SMITH W. BENNETT,
P. H. KAISER,
County Solicitor,
F. L. TAFT,
Ass't Solicitor,
Attorneys for Respondent in Each of said Cases.

Endorsements on stipulation.

U. S. circuit court. No. 5714. The Mercantile Nat'l Bank *vs.* R. S. Hubbard, as treasurer, etc. Stipulation. Filed Nov. 27, 1899. Irvin Belford, clerk U. S. circuit court, N. D. O.

Exceptions by Respondent to Special Master's Report.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Complainant, *vs.* R. S. HUBBARD, Treasurer of Cuyahoga County, Ohio, Respondent. } No. 5714.

Exceptions by respondent to special master's report.

Comes now the respondent, —— —— treasurer of Cuyahoga
498 county, Ohio, being within one month from the filing of the report of the special master herein, and excepts to the finding of facts and conclusions of law filed herein by Irvin Belford, Esq., special master herein, in the following particulars, to wit:

1. Said respondent excepts to the refusal of the said special master to exclude as evidence herein, and further excepts to the said special master including as evidence herein and incorporating in his report filed herein that portion of the 17th finding which is in the words and figures following, to wit:

"As a result of my examination of such report, I find that the capital stock of building and loan associations paid in, in 1896, amounted to $80,175,163.71, and that the total number of shares in force at the close of 1896 was 1,389,059, and that the total number of shares upon which loans had been made was 410,176. No doubt large amounts of money were loaned in this year by building and loan associations to non-stockholders in such a manner as to bring it within competition with national banks and which would properly be called credits. I further find that the value of credits, after deducting *bona fide* debts amounted to $99,227,416.00. That moneys invested in bonds, stocks, joint-stock companies and annuities or otherwise, *was* $7,611,124."

"And that the valuation of State banks as fixed by the State board of equalization was $8,410,780.00. I also find that in Ohio, in 1890, there were real-estate mortgage debts, in force, amounting to $259,842,188.00."

"An examination of the valuation of shares of bank as returned to, and fixed, by the State board of equalization of bank shares, for 1897, discloses the fact that the assessed valuation of shares of all incorporated banks in the State of Ohio, in the year 1897, exclusive of real estate, as fixed by the State board of equalization, was 61⅔ per cent. of the aggregate capital stock surplus and undivided profits of such incorporated banks."

"That the assessed valuation of all national bank shares in Ohio, in 1897, exclusive of real estate as fixed by the county auditors of the State, was $58\frac{5}{10}$ per cent. of the aggregate capital stock, surplus and undivided profits as reported to said auditor, which said valuation was increased by the State board of equalization to about $59\frac{5}{10}$ per cent. of the said aggregate value of said capital stock, surplus and undivided profits, an increase of $1\frac{6}{10}$ per cent. on the valuation fixed by the auditors."

"That the assessed valuation of national bank shares in the State of Ohio for the year 1897, outside of Cuyahoga county ex-
499 clusive of real estate, as fixed by the county auditors of the State, was $58\frac{9}{10}$ per cent. of the aggregate capital stock, surplus and undivided profits as reported to such county auditors which said valuation was decreased by the State board of equalization to $57\frac{7}{10}$ per cent. of said aggregate value of said capital stock, surplus and undivided profits, being a decrease of a little more than 2 per cent."

As grounds of such exceptions, said respondent says:

a. "That if the court holds it competent to put in proof -tered into in writing, and as found by the special master in the eighteenth finding of facts, incorporated in his said report, the said parties stipulated and agreed:

"That if the court holds it competent to put in proof of taxation of moneyed capital and bank shares, outside of Cuyahoga county, that there is no discrimination for counties outside of the county of Cuyahoga, in the State of Ohio, by the taxing officers of said county in fixing the valuation for the purposes of taxation upon moneyed capital as against shares in incorporated banks."

b. That thereby the parties hereto agreed as an admitted fact in said cause, that at the time in question, and then being considered by said special master, there was and is no discrimination as provided against in section 5219 of the Revised Statutes of the United States, against shares of incorporated banks in favor of other moneyed capital in the hands of individual citizens of the State of Ohio, in all the counties of said State, outside of the said county of Cuyahoga.

c. That as an admitted fact in said cause the taxation of shares of national banking associations, outside of said county of Cuyahoga was not and is not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of Ohio, outside of the county of Cuyahoga.

d. That said stipulation and agreement, so made by said parties, was and is binding and conclusive upon said parties and their counsel, for thereby the respondent was excluded from taking any further testimony to disprove the allegations contained in paragraphs 5, 6 and 8 of complainant's bill of complaint upon the issue of the alleged discrimination against the national bank shares in the State of Ohio outside of Cuyahoga county. That by virtue of said stipulation and agreement the issue of such alleged discrimination against national banks shares was limited to the said county of Cuyahoga, and that the evidential facts above set forth were offered

in opposition to the stipulation and agreement aforesaid and should not have been received by said special master, and should not have been incorporated in his said report.

500 Wherefore respondent says that the admission of the testimony aforesaid was erroneous and plainly prejudicial to the respondent and should be stricken from the finding of facts and report of the special master.

2. Said respondent excepts to that portion of the finding of facts, in paragraph 17 thereof, as is in the words and figures following, to wit:

"And I also find that the valuation placed upon the shares of complainant bank by the State board of equalization was much higher than that fixed on other moneyed capital in the hands of individual citizens and corporations in the county of Cuyahoga and city of Cleveland, and that such action of the board of equalization was an unjust discrimination against said complainant."

And as ground of such exception said respondent says:

That such finding is not justified by the evidence and is against the evidence taken in said cause and incorporated in said report of said special master. For that in paragraph 17 of said report said special master has found that moneyed capital in the hands of individual citizens in Cuyahoga county was assessed for taxation in the year 1897 as nearly as practicable at 60 per cent. of its value. And he has further found, in paragraph 19 of his said report that the actual cash value of the shares of stock in complainant's bank was $128.00 per share; and the master having found, in paragraph 3, of his said report that the capital stock of said complainant's bank was divided into 10,000 shares, the actual cash value thereof, as found by said special master was $1,280,000.00. That pursuant to section 2766 Revised Statutes of Ohio there should be deducted from the true value of said shares the value of the real estate as the same stands on the duplicate, which the master finds in the 5th paragraph of said report to amount to $117,370.00, which being deducted from the actual cash value of said shares leaves $1,162,630.00 as the true value, after deducting the value of the real estate. That computing 60 per cent. upon said amount it would fix the value upon which taxes should have been computed at $697,578.00, while the said board of equalization fixed the value of said shares, for taxable purposes, at only $642,320.00. That thereby the amount of the taxable value of complainant's shares, as compared with their actual value, was but slightly in excess of 55 per cent., and therefore no discrimination against complainant's shares was caused by the action of said board and none existed in favor of any other moneyed capital in Cuyahoga county, Ohio.

As evidence supporting the valuation as fixed by said
501 board to said bank shares, and far in excess thereof, the special master finds that at the time the cashier of said bank made the report of the resources and liabilities of said complainant bank to the county auditor, and for six months prior and six months subsequent thereto, said complainant bank sustained no losses; and during all said time made net earnings sufficient out of which to pay

a dividend semi-annually of 3 per cent. on all of its said shares, and carried forward at each of said semi-annual periods, to the credit of said shares, net profits varying in amount from $84,000 to $94,000.

3. Said respondent excepts to the refusal of the special master to find the finding of fact requested by respondent which finding of fact, as requested, is as follows:

"That the true value in money of said 10,000 shares of capital stock in said complainant bank, was, on the day preceding the second Monday in April, 1897, $1,280,000.00 from which should be deducted the value of the real estate belonging to said bank, as the same appears upon the duplicate, amounting to $117,370.00, leaving a balance of $1,162,630.00. That adopting the practice of the assessing officers for said county of Cuyahoga, during the year 1897, of assessing other moneyed capital in the hands of individual citizens of said city and county, at 60 per cent. of the true value thereof in money, the taxable value of said shares in the aggregate was $697,576.00. That said State board for the equalization of the shares of incorporated banks having fixed the valuation thereof at $642,320.00; said master finds that there was no unlawful or unjust discrimination against the shares of complainant bank, in favor of any other moneyed capital in said county of Cuyahoga, or elsewhere."

Exceptions to Conclusions of Law.

1. The respondent excepts to the conclusion of law of the special master as set forth in the third paragraph of his report and conclusions of law, and excepts to his conclusions that the plea contained in the amendment to the answer does not constitute a defense to the matters contained in the bill.

2. The respondent excepts to the conclusion of law of the special master as set forth in paragraph four of his report of his conclusions of law, and excepts to his conclusion that the board of equalization of the shares of incorporated banks, did not have jurisdiction
502 to increase the valuation of the shares of the complainant bank as fixed by the auditor of Cuyahoga county. And further excepts to the conclusion of the master finding for the complainant on said issue.

Wherefore the respondent prays the judgment of the court to correct the finding of fact of the special master in the particulars as herein set forth, and prays the judgment of the court in the vacating of the findings in those respects; and upon the report of the master as so amended in the finding of facts and conclusions of law as herein requested, the respondent prays for judgment and decree in his favor.

P. H. KAISER,
County Solicitor,
F. L. TAFT,
Ass't County Solicitor,
T. H. HOGSETT,
Director of Law of City of Cleveland,
Counsel for Respondent.

F. S. MONNETT,
Att'y General,
SMITH W. BENNETT, *Of Counsel.*

Endorsements on exceptions by respondents.

5714. In the circuit court of the U. S. northern district of Ohio, *eastern division. The Mercantile National Bank of Cleveland, Ohio*, complainant, *vs.* R. S. Hubbard, treasurer Cuyahoga county, O., respondent. Exception by respondent to special master's report. Filed Nov. 28, 1899. Irvin Belford, clerk U. S. circuit court, N. D. O.

Motion for Order Directing Master to File Testimony.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Plaintiff, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Defendant. } Motion.

Now comes the plaintiff and moves the court for an order directing the master heretofore appointed in said case to report the
503 testimony taken therein, and that such order have the force and effect of an order made at the time said master was appointed to hear the testimony and report his conclusions of fact and law therein.

The plaintiff also moves the court for permission to amend its exceptions to the master's report by embodying therein an exception to the failure of the master to make a finding of the adjudications made in said cause by this court following the adjudication of 1887, and to his failure to find as a conclusion of law that such subsequent adjudications are a bar to the present action.

W. W. BOYNTON AND
N. T. HORR,
Sol'rs for Pl'ff.

Counsel for respondent hereby waive notice of the above motion this 16 day of December, 1899.

P. H. KAISER,
Def't's Att'y.

Endorsements on motion.

5714. U. S. circuit court, northern district of Ohio, eastern division. The Mercantile Nat'l Bank of Cleveland, plaintiff, *vs.* R. S. Hubbard, as treas. of Cuyahoga county, defendant. Motion. File W. H. T. Filed Dec. 16, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O.

Order to File Testimony and Leave to Compl't to Amend Exceptions.

October Term, A. D. 1899, to wit, December 16th, A. D. 1899.

Present: The Honorable Wm. H. Taft, U. S. circuit judge.

THE MERCANTILE NATIONAL BANK OF CLEVELAND
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County. } 5714. Chancery.

On motion of complainant it is ordered that the master heretofore appointed in said case do report the testimony taken on which his said report was made, and that this order take effect as of the date of the order appointing said master. And the action of master in heretofore filing said evidence is hereby affirmed.

504 It is further ordered that leave be granted to complainant to amend its exceptions to the report of the master heretofore filed in said cause for failure to report upon the facts as to the former adjudications mentioned in the *the* bill of complaint and his conclusions of law thereon.

Additional Exceptions.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Defendant.

Additional exceptions.

Now comes the plaintiff and by leave of the court files further exceptions to the report of the master herein as follows:

1st. Said master failed to report the adjudications or any facts relating thereto made in the years 1893 and 1894 shown by the proof, of the questions involved in the present suit.

2nd. The proof shows that in the years 1893 and 1894 like judgment was rendered for the plaintiff as the one rendered in 1887 on like issues in suits involving the same questions of fact and of law between the same parties.

3rd. The master failed to make any report in relation to said adjudications or any conclusions of law therefrom. Wherefore plaintiff prays the court to look into the evidence and make a finding therefrom of said former adjudications as claimed by the plaintiff.

W. W. BOYNTON AND
N. T. HORR,
Sol'rs for Plff.

Endorsements on additional exceptions.

5714. U. S. circuit court northern district of Ohio, eastern division. The Mercantile Nat'l Bank of Cleveland *vs.* R. S. Hubbard, as treasurer of Cuyahoga Co. Additional exceptions. Filed Dec. 18, 1899, Irvin Belford, clerk, U. S. circuit court, N. D. O. Boynton & Horr, sol'rs for pl'ff.

505 *Opinion of the Court.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, *vs.* R. S. HUBBARD, Treasurer of Cuyahoga County, Ohio. } Equity. No. 5714.

This case comes before the court on exceptions to the report of the master.

The bill was filed by The Mercantile National Bank, of Cleveland, Ohio, a banking corporation organized under the laws of the United States, and doing business in the city of Cleveland, to enjoin the county treasurer of Cuyahoga county, Ohio, from collecting taxes assessed against the holders of the shares of its capital stock, on the ground that the taxes thus assessed violate section 5219 of the Revised Statutes of the United States, which provides that the taxation of national bank shares shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such States.

The bill avers that the auditor of Cuyahoga county assessed the total ten thousand shares, of the par value of $100 each, in the complainant bank, at $519,320.00; that the State board of equalization for banks increased this valuation to $642,320; that this increase was made without notice to the complainant bank, and without giving it an opportunity to be present; that the increase by the State board of equalization was from 60 per cent. to 74 per cent. of the true value of the shares of stock; that the assessed value of other moneyed capital in the hands of citizens of Cuyahoga county and the city of Cleveland does not exceed 60 per cent. of the true value; that the State board of equalization knowingly and designedly made this discrimination against the complainant.

The bill further avers that, by section 2730 of the Revised Statutes of Ohio, under the title "taxation," the term "credits" is held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or services due or to become due to the person liable to pay taxes thereon, including
deposits in banks or with persons in or out of this State, other
506 than such as are held to be money, when added together,
(estimating every such claim or demand at its true value in money), over and above the sum of legal *bona fide* debts owing by

such person; that a large amount of moneyed capital in the hands of individual citizens of the State of Ohio, invested in promissory notes and other legal obligations, is, by the aforesaid provision, allowing legal *bona fide* debts to be deducted therefrom, expressly exempted from taxation; that at least $200,000,000 of credits were exempted by this provision; that the shares of building & loan associations, created under the laws of Ohio, are, by law, to be considered as credits, and held as such; that thereby $70,000,000 was, by statute, exempted from taxation; that such building & loan associations are empowered to borrow and loan money, and do a general banking business with their members and depositors.

The bill then avers that a number of shareholders in the complainant corporation owe debts which have not been deducted from the value of their shares, though the evidence of such debts has been tendered to the county auditor. The averments of the bill are that $123,000 should be deducted from the assessment of the State board of equalization, upon which taxes to the amount of $3,726.90 have been assessed; and that there should be deducted from said assessment, also, the amount of the indebtedness of the individual stockholders of the bank, which is such a sum that the tax assessed thereon, upon the valuation fixed by the county auditor, if $3,524.78. The complainant tendered the amount due, less the sum in dispute.

The complainant further pleads a former adjudication between the complainant and Horatio N. Whitbeck, the predecessor of the defendant as treasurer of Cuyahoga county, in which it was adjudged, as between the parties, that the system of deduction of debts from credits under the statute of Ohio was a discrimination against the complainant bank, in violation of section 5219 of the Revised Statutes of the United States.

The defendant answered, making an issue upon the fact of notice to the complainant of the hearing before the State board of equalization; an issue upon the averments as to the discrimination arising from the operation of the statutes of Ohio, in allowing debts to be subtracted from credits; and an issue denying the effect claimed for the former adjudication between the complainant and the predecessor in office of the defendant.

The case was referred to a master, who has made a report. He finds that no sufficient notice was given to the complainant
507 bank of the intention to increase the assessment. He finds that the board of tax remission, organized under section 167 of the Revised Statutes of Ohio, had no authority to consider the action of the State board of equalization for banks, although it was composed of the same persons. He finds that about 1,479 of the bank's shares are held by persons whose indebtedness, over and above all other credits, exceeds the par value of these shares.

The master sets out at length a number of facts bearing upon the value of the stock of the complainant. He finds that the amount of capital stock of building & loan associations paid in 1896 amounted to $80,000,000; that the total number of shares in force was 1,389,059; that the total number of shares on which loans had been

made was 410,000; that large amounts of money were loaned in this year of 1896 by building & loan associations to non-stockholders, in such manner as to bring it into competition with national banks, and which would properly be called credits; that the value of credits, after deducting *bona fide* debts, amounted to $99,000,000; that moneys invested in bonds, stocks, joint-stock companies, annuities, and otherwise, amounted to $7,600,000 and that the valuation of State banks, as fixed by the State board of equalization, was $8,400,000; that the individual deposits in savings banks in Cuyahoga county, in 1897, amounted to $50,000,000; that real-estate mortgage debts in Ohio amounted to $259,000,000, and in Cuyahoga county to $21,000,000.

The master says that there is no evidence before him to show what portion of the credits consists of moneyed capital in the hands of individuals which in fact enters into competition for business with national banks; that there is no evidence as to what the total moneyed capital in the hands of individual citizens, and included in the term "credits" amounts to; that he is unable to ascertain or report what proportion the moneyed capital of individuals, included in the term "credits" bears to the amount invested in national bank shares; that he is unable to report whether there has, or has not, been any material discrimination, such as the Federal statute was enacted to prevent, against said complainant, and in favor of other moneyed capital in the State, outside of Cuyahoga county. The report proceeds:

"I find, however, the fact to be that in said year a large amount of moneyed capital in the hands of individual citizens of the State, invested in promissory notes and other obligations and credits, was, by section 2730 of the Revised Statutes of Ohio, authorized
508 to be exempted from taxation through the deduction therefrom of legal *bona fide* debts.

"There is nothing in the evidence that will show whether shares of incorporated banks in the counties of the State outside of Cuyahoga county were valued for taxation by the auditors at a higher or lower percentage, compared with the true value in money of their stocks, than were the banks in Cuyahoga county, and hence the master is unable to report or find whether there was any unjust discrimination as between other incorporated banks and the complainant bank, and against the complainant bank.

"An examination of the valuation of shares of banks as returned to and fixed by the State board of equalization of bank shares for 1897, discloses the fact that:

"The assessed valuation of shares of all incorporated banks in the State of Ohio, in the year 1897, exclusive of real estate, as fixed by the State board of equalization, was 61⅔ per cent. of the aggregate capital stock, surplus and undivided profits of such incorporated banks;

"That the assessed valuation of all national bank shares in Ohio, in 1897, exclusive of real estate, as fixed by the county auditors of the State, was 58.5 per cent. of the aggregate capital stock, surplus and undivided profits as reported to said auditors; which said

valuation was increased by the State board of equalization to about 59.5 per cent. of the said aggregate value of said capital stock, surplus and undivided profits, an increase of 1.6 per cent. on the valuation fixed by the auditor;

"That the assessed valuation of national bank shares in the State of Ohio for the year 1897, outside of Cuyahoga county, exclusive of real estate, as fixed by the county auditors of the State, was 58.9 per cent. of the aggregate capital stock, surplus and undivided profits as reported to such county auditors; which said valuation was decreased by the State board of equalization to 57.7 per cent. of said aggregate value of said capital stock, surplus and undivided profits, being a decrease of a little more than two per cent;

"That the assessed valuation of national bank shares in Cuyahoga county, in 1897, exclusive of real estate, as fixed by the county auditor, was 56.4 per cent. of the aggregate of the capital stock, surplus and undivided profits as reported to the auditor; which said valuation was increased by the State board of equalization to 67.8 per cent. of the capital stock, surplus and undivided profits of said banks, being an increase of a little more than 20.2 per cent. of
509 valuation; while the increase of shares of the complainant bank was a little more than 23.6 per cent.

"I find that moneyed capital in the hands of individual citizens of the city of Cleveland and the county of Cuyahoga was assessed for taxation by the assessing officers of the county, in the year 1897, and for a long time theretofore, as nearly as practicable, at sixty per cent. of its value; and that as compared with other moneyed capital in said county, the value fixed by the auditor on the stocks of said bank for the purposes of taxation was fair and equitable. And I also find that the valuation placed upon the shares of complainant bank by the State board of equalization was much higher than that fixed on other moneyed capital in the hands of individual citizens and corporations in the county of Cuyahoga and city of Cleveland, and that such action of the board of equalization was an unjust discrimination against said complainants.

"Eighteenth. By stipulation signed by the parties to said cause, it was agreed that if the court holds it competent to put in proof of taxation of moneyed capital and bank shares, outside of Cuyahoga county, that there is no discrimination for counties outside of the county of Cuyahoga, in the State of Ohio, by the taxing officers of said counties, in fixing the valuations for the purposes of taxation upon moneyed capital as against shares in incorporated banks.

"Nineteenth. I find that on the day said statement was filed with the auditor, the actual cash value of the shares of stock in complainant's bank was $128 per share, and that the value of the real estate of said bank, as it then stood upon the tax duplicate, was $117,370."

The master then files, as part of his report, a true copy of the record in the case of The Mercantile National Bank *v.* Horatio N. Whitbeck, treasurer of Cuyahoga county, Ohio.

In that bill of complaint it was averred:

"That the laws of Ohio authorize and permit the owner of credits

to deduct therefrom all debts owing by him and required him to list for taxation only the excess of credits over his indebtedness, and that such is the uniform practice throughout the State, and that under the laws of the same State the owner of capital stock of your orator is denied the right to deduct therefrom his indebtedness, but is required to list for taxation the whole number of shares owned by him and not simply the excess of the value of said shares over his indebtedness, and your orator insists that such discrimination results in the taxation of your orator's stock at a much greater rate
510 than is assessed upon other moneyed capital in the hands of individual citizens of Ohio."

Also that:

"A large amount of moneyed capital in the hands of individuals invested in promissory notes and other obligations and credits is by the aforesaid provision allowing deduction of legal *bona fide* debts to be made therefrom expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares as to which no exemption or deduction is provided for by the laws of the State."

The bill, after setting out the names of certain stockholders who claimed the right to deduct their *bona fide* debts from the value of their shares, further averred:

"That each of said above-named shareholders was indebted and owing to others of legal *bona fide* debts, a sum in excess of the credits from which, under the laws of Ohio, he was entitled to deduct said debts to an amount equal to the value of said shares * * * which said excess of said debts over credits as aforesaid should be deducted from the assessed value of said shares so owned by him, and by reason of the facts above stated said shares of said stock should not have been placed on the tax duplicate and no tax should have been assessed thereon, * * * and your orator insists that by reason of the premises above set forth there should be deducted from the shares of capital stock owned by said shareholders above named and now standing on the tax duplicate of said county, $285,500, the par value of the shares of said stock, in all the sum of $141,543.48, according to the assessed value thereof."

The bill further averred as follows:

"Your orator avers and insists that the taxes so levied and assessed against it on account of its said shares of stock are unjust, illegal and void for the following among other reasons:

"1st. That said tax is levied and assessed against your orator directly, and is in violation of the act of Congress under which your orator is incorporated.

"2nd. That the laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him, and requires him to list for taxation only the excess of credits over his indebtedness, and that such is the uniform practice throughout the State, and that under the laws of the same State the owner of capital stock of your orator is denied the right to deduct therefrom his

indebtedness, but is required to list for taxation the whole
511 number of shares owned by him, and not simply the excess of the value of said shares over his indebtedness, and your orator insists that such discrimination results in the taxation of your orator's stock at a much greater rate than is assessed upon other moneyed capital in the hands of individual citizens of Ohio."

There was a general denial of these averments, and special denials as follows:

"He (defendant) denies that any of the shareholders of said banking association at the times names in the said bill of complaint, was indebted or owing to others of *bona fide* debts a sum in excess of the credits from which, under the laws of Ohio, he was entitled to deduct said debts to an amount equal to the value of his said shares or any part thereof. He denies that either of said shareholders was then indebted in any sum whatever, or that even if any of them was so indebted as claimed in said bill of complaint, he is thereby entitled to deduct the excess of such indebtedness over his credits from the assessed value of his said shares, or that for any reason said shares of stock should not have been placed on the tax duplicate and no tax assessed thereon. * * * He denies that any sum whatever should be deducted from the valuation of the shares of the capital stock owned by said shareholders named in said bill of complaint. He denies that the laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him, or that such is the uniform practice throughout the State. He denies that the taxation of shares of said complainant's stock is at a much or any greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State. He denies that the necessary effect of the proceedings had in the assessment and levy of the tax standing against said complainant and the shares thereof owned by its said shareholders, has been to deprive said complainant or said shareholders * * * of any security denied them by the limitation of said act of Congress."

A large amount of evidence seems to have been taken in the case, though that has not been produced in evidence before the master, or called to the attention of the court.

The case was referred to a special master, and then came on for final hearing. A decree was entered, reciting that the court, being fully advised in the premises, from the testimony and exhibits, and the special master's report, adduced in open court, did find all the allegations of the bill to be true, except certain averments
512 which are not here material, and enjoined the collection of $3,967 of tax assessed against the complainant.

As conclusions of law, the master found that the action of the State board of equalization, in increasing the assessment, was invalid for want of notice to the bank, and that the State board of tax remission had no jurisdiction to set aside or reconsider that assessment.

The master further found that the valuation of the auditor was 60 per cent. of the aggregate capital stock, surplus and undistributed profits; that the State board of equalization increased this valuation

to 70 per cent. of the aggregate capital stock, surplus and undivided profits; that the valuation of property generally in Cuyahoga county was but 60 per cent.; and that this was a discrimination against the property of the bank of 10 per cent., which should be enjoined.

The master further found that the decree in the Whitbeck case was not a former adjudication of the issues in this case.

TAFT, *Circuit Judge:*

I am not able elaborately to state the reasons for my conclusions in this case. I think it better, in view of the fact that the case will certainly be appealed, that I should simply give them, with a very summary statement of my reasons.

Upon the first issue, whether the action of the State board of equalization was invalid for want of notice, I do not find it necessary to pass. The action of the State board was embodied in a report to the county auditor, and by him placed upon the duplicate, so that it now appears on the face of the duplicate as a lawful warrant for the collection of the tax.

This proceeding is a bill in equity to enjoin the collection of the tax, on the ground that it was assessed without due notice to the complainant. If the tax assessed is no greater than ought to have been assessed, then the complainant is not in a position to ask the intervention of a court of equity, because, however irregular the action of the State board may have been, if the complainant cannot make it clear that, by a hearing upon notice, it would have been entitled to an assessment less than that which was made, the bill must be dismissed.

The master finds that the actual market value of the stock is
513 $128 per share. There are 10,000 shares of the stock, making a total valuation of $1,280,000. Sixty per cent. of this valuation would be $768,000. Deducting the assessed value of the real estate, would leave a valuation of $650,630. The assessment of the State board is $642,000. It will be seen that the assessment of the State board of equalization is certainly only 60 per cent. of the actual value of the shares of stock in the market. The finding of the master is that there is nothing in the evidence to show whether the shares of incorporated banks in the counties of the State outside of Cuyahoga county were valued for taxation by the auditors at a higher or lower percentage, compared with the true value of their stocks, than were the banks in Cuyahoga county, and hence the master is unable to report or find whether there was any unjust discrimination as between other incorporated banks and the complainant bank, and against the complainant bank.

The other findings of the master as to the percentage of the aggregate capital stock, surplus and undivided profits assessed for taxable valuation by the State board of equalization of all incorporated banks and of all national banks and national bank shares outside of Cuyahoga county, therefore furnish no basis for concluding what relation the assessed percentage of the aggregate capital, surplus and undivided profits has to the market, and actual value of the stock.

I am unable to find, therefore, in the grounds upon which the master proceeded, any predicate for the assumption that the other banks in the State were taxed at any less than 60 per cent. of the actual market values of their shares; and, if they were not so taxed, then there is no ground for claiming that there was any discrimination in the action of the State board of equalization in assessing the value at 60 per cent. of its actual value. There is no better evidence of the actual value of bank shares than the market value. It seems to me that the findings of the master upon this point, therefore, are inconsistent; and the exception to them must be sustained.

In that view it becomes important to decide, as already stated, whether or not the notice of the action by the State board of equalization was sufficient.

The next question is whether the operation of the statutory definition of "credits" to be returned for taxation in Ohio operates to discriminate in favor of other moneyed capital in the State against national bank shares. Upon this point, the decision in the case of National Bank of Wellington *v.* Chapman, 173 U. S. 205, leaves no doubt. In that case, it was held that the term "moneyed capital," as used in the Federal statute, does not include capital which
514 does not come into competition with the business of national banks, and that exemptions from taxation, however large, such as deposits in savings banks, or moneys belonging to charitable institutions, which are exempted from reasons of public policy, and not as an unfriendly discrimination against investments in national bank shares, cannot be regarded as forbidden by the Federal statute. The court then proceeded:

"With no purpose to discriminate against the holders of shares in national banks, and with the taxation of the shareholders in the two classes of banks, State and national, precisely the same, the question is whether this system of taxation in Ohio, in its practical operation, does materially discriminate against the national bank shareholder in the assessment upon his bank shares."

The court then proceeded to treat the question of such discrimination as a question of fact, to be determined by the evidence, and reference was made to the report of the auditor to show what the total credits upon which taxation was laid, after deducting the debts allowed, were. It was pointed out that the deductions which might be made included deductions for many other things than what would be strictly moneyed capital within the meaning of section 5219, and that there was nothing in the evidence then before the court to enable it to say how much of these deductions was moneyed capital within the meaning of that section.

I do not find that there was anything more of substance before the master than there was before the supreme court upon this issue of fact. There is proof of the capital in savings banks, and also of the capital invested in building & loan associations; but, under the decision of Mercantile National Bank *v.* New York, 121 U. S. 138, capital invested in savings banks cannot be regarded as moneyed capital within the meaning of section 5219, exemption of which from taxation can constitute a discrimination within the inhibition of that

section. It seems to me that building associations are certainly not to be differentiated in their purpose, or object, or practical effect, from savings banks; and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage
515 debts incurred in the purchase of the land and the construction of the house. The mere fact that every shareholder in a building association need not be a borrower cannot, I think, change the effect of the general purpose of the building-association law.

The general result of the evidence is no more satisfactory as showing what amount of discrimination, if any, there is by reason of this definition of credits in the Ohio statute of taxation than it was in the case of National Bank of Wellington *v.* Chapman. For this reason, I must conclude, as the master did, that the averments of the bill as to the discrimination, arising from the operation of this definition of "credits," against moneyed capital, is not such as to justify any action by the court in the complainant's favor.

There remains to be considered the question arising under the claim of former adjudication, made in the bill. Upon the argument, and before I had made a close examination of the bill, my impression was that upon this claim of former adjudication the complainant must succeed. It seemed to me that the adjudication in the former case was a mere adjudication of the necessary operation of the statute of Ohio to discriminate against national banks, and therefore that, that question having been in judgment between the same parties, it must receive the same adjudication here. Looking into the bill, however, in the former case, and after an examination of the case of National Bank of Wellington *v.* Chapman, I find that, in order to support the averments of the bill, it was necessary in that case for the complainant to rely, not only upon the statute of Ohio defining credits, but also on its practical operation in exempting moneyed capital in the hands of individuals in Ohio from taxation. The practical operation of a law of that character, to show how much, if any, discrimination there is, is a question of fact to be determined upon the evidence. A large amount of evidence was taken in the former suit, and the court, in its decree, found the averments of fact as to the practical operation of the law of Ohio, in the bill, to be fully sustained. In other words, the court found the fact to be that for the years then involved the statute of Ohio, as enacted, operated to exempt so large an amount of the moneyed capital in the hands of individuals in that State as to discriminate against the holders of the complainant's shares, and result in the taxation of the stock at a much greater rate than was assessed upon other moneyed capital in the hands of individual citizens of Ohio. The adjudication, therefore, upon which the complainant relies, is an ad-
516 judication, not of law, but of fact; not of the fact at issue in the present case, but of the fact as to the practical operation

of the law at the time of that adjudication, to wit, in 1887, in 1893, and in 1894.

In this aspect, the fact as to the practical operation of the law in 1896 may be different from that in 1887, and the other years. A finding of a condition in 1887 does not conclusively establish the existence of the same condition in 1896 and 1897.

For this reason, I cannot sustain the contention made on behalf of the complainant that the former adjudication conclusively entitles the complainant to the same relief as that which was granted it in the Whitbeck case.

The exceptions to the master's report on this ground are, therefore, overruled.

The result is that the preliminary injunction must be dissolved and the bill dismissed at complainant's costs. The same order must be made in the other cases which it is agreed depend on this.

WM. H. TAFT,
Circuit Judge.

Dec. 23, '99.

Endorsements on opinion of court.

5714. United States circuit court, northern district of Ohio, eastern division. The Mercantile National Bank of Cleveland, Ohio, *v.* R. S. Hubbard, treasurer of Cuyahoga county, Ohio. Opinion of the court. Filed Dec. 23, 1899. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Final Decree.

October Term, A. D. 1899, to wit, December 23rd, A. D. 1899.

Present: The Honorable William H. Taft, U. S. circuit judge, and Honorable Augustus J. Ricks, U. S. district judge.

The Mercantile National Bank of Cleveland *vs.* R. S. Hubbard, as Treasurer of Cuyahoga County.	5714.	Chancery.

This cause came on for final hearing on the master's report, 517 the exceptions thereto and the evidence and proofs in the case, and the court being fully advised in the premises, doth order and decree that the exceptions of the plaintiff to the report of the master be and the same are hereby overruled, and the exception of the respondent to the master's conclusion of law from the facts relating to the increase of the valuation of the shares of complainant by the State board of equalization for banks is sustained, and on the report of said master and the evidence in the case,

It is ordered, adjudged and decreed that the said bill of complainant herein be and the same is hereby dismissed with costs to the defendant to be taxed.

And the cause coming on for further hearing on the plaintiff's

motion for the allowance of an appeal from said decree, to the circuit court of appeals, the said application for such appeal is hereby allowed, and the preliminary injunction herein continued on the plaintiff's executing an appeal bond in the sum of two hundred and fifty dollars ($250.00).

Application for Appeal.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Defendant. } No. 5714. In Equity.

Application for appeal by plaintiff.

The above-named complainant conceiving itself aggrieved by the decree made and entered, on the 23rd day of December, in the above-entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the sixth circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the United States circuit court of appeals for the sixth circuit.

W. W. BOYNTON &
N. T. HORR,
Solicitors for Plaintiff.

518 Endorsements on application for appeal.

5714. The Mercantile National Bank of Cleveland *v.* R. S. Hubbard, as treasurer of Cuyahoga Co. 5714. Application for appeal. Filed Jan. 5, 1900. Irvin Belford, clerk, U. S. circuit court, N. D. O.

Assignment of Errors on Appeal.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Defendant.

Assignment of errors on appeal.

The plaintiff makes the following assignment of errors which he avers occurred in the trial of this cause, and prays for reversal of the decree of the circuit court and for a decree and judgment as prayed for by it in its original bill.

First. The court erred in holding that it was immaterial whether the action of the State board of equalization for banks in increasing the valuation of complainant's shares was invalid for want of notice to the bank or its shareholders of the time said board would consider the question of the sufficiency of the auditor's valuation and affording them an opportunity for a hearing.

Second. The court erred in holding and deciding that other banks in the State were not taxed at less than sixty per centum (60 per cent.) of the actual market value of their shares, and if they were not so taxed, then there was no ground for claiming that there was any discrimination in the action of the State board of equalization for banks in assessing the value of the shares of the plaintiff, and that in view of such fact, it became unnecessary to decide whether or not the notice of the action of the State board was sufficient.

Third. The court erred in holding that if the tax assessed against the shareholders of the bank is no greater than ought to have
519 been assessed under the law, then the plaintiff is entitled to no relief whether the State board had jurisdiction to increase the auditor's valuation or not.

Fourth. The court erred in failing and refusing to decide that the action of the State board of equalization for banks in increasing the valuation of the auditor was void for want of jurisdiction to act at the time the board took the action complained of, and in refusing to enjoin the tax levied and assessed on the amount so added to the valuation of the auditor by the State board of equalization.

Fifth. The court erred in holding and deciding that the former adjudications between the complainant and treasurer of Cuyahoga county in 1887, 1893 and 1894, shown by the record thereof put in evidence *was* not conclusive of the right of the shareholders of the plaintiff to deduct their *bona fide* indebtedness from the value of their shares in fixing the value of the latter for taxation.

Sixth. The court erred in holding that in the former cases it was necessary to rely not only on the statutes of Ohio and of the United States, but on the practical operation of the laws of Ohio in exempting moneyed capital in the hands of individual citizens of the State on taxation—that it was necessary to show the practical operation of the law was such as to show a material discrimination.

Seventh. The court erred in holding that the former adjudications relied on were of fact, and not of law, and of the fact of the practical operation of the law in 1887, 1893 and 1894.

Eighth. The court erred in overruling the exceptions of the complainant to the master's report, and in refusing judgment for the complainant on the ground that the former adjudications were conclusive of its right thereto.

W. W. BOYNTON &
N. T. HORR,
Sol's for Pl'ff ——.

Endorsements on assignment of errors.

No. 5714. The Mercantile National Bank of Cleveland *vs.* R. S. Hubbard, as treas. of Cuyahoga Co. Assignment of errors. Filed Jan. 5, 1900. Irvin Belford, clerk U. S. circuit court, N. D. O. W. W. Boynton & N. T. Horr, sol's for pl'ff.

520 *Appeal Bond.*

United States Circuit Court, Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Ohio, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.
} Appeal Bond.

Know all men by these presents, that we, The Mercantile National Bank of Cleveland, O., as principal, and E. R. Perkins and Charles L. Murfey, as sureties, are held and firmly bound unto the defendant, R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, or his successors in office, in the full and just sum of two hundred and fifty dollars ($250) to be paid to the said defendant or his successors in office his certain attorneys, executors, administrators or assigns to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this fifth day of January, in the year of our Lord one thousand nine hundred.

Whereas, lately at a circuit court of the United States for the northern district of Ohio, eastern division, in a suit depending in said court between said The Mercantile National Bank, plaintiff, and the said R. S. Hubbard, as treasurer of the county of Cuyahoga, Ohio, defendant, a decree was rendered against the said The Mercantile National Bank, and the said bank having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit and a citation directed to the said R. S. Hubbard, as treasurer aforesaid, citing and admonishing him to be and appear at a session of the United States circuit court of appeals for the sixth circuit to be holden at the city of Cincinnati in said circuit on the 4th of February next.

Now, the condition of the above obligation is such that if the said The Mercantile National Bank shall prosecute said appeal to effect and answer all damages and costs if it fail to make the said appeal good, then the above application to be void, else to remain in full force and virtue.

[CORPORATE SEAL.] MERCANTILE NATIONAL BANK,
By CHAS. L. MURFEY, *Cashier.*
E. R. PERKINS, [SEAL.]
CHAS. L. MURFEY.

521 Sealed and delivered in the presence of:
H. F. RISSER.
N. T. HORR.

Approved by:
A. J. RICKS,
U. S. Judge, &c.

Endorsements on appeal bond.

5714. U. S. circuit court, northern district of Ohio, eastern division. The Mercantile Nat'l Bank of Cleveland, plaintiff, *vs.* R. S. Hubbard, as treas. of Cuyahoga county, Ohio, defendant. Appeal bond. Filed Jan. 5, 1900. Irvin Belford, clerk U. S. circuit court, N. D. O.

Citation.

UNITED STATES OF AMERICA, }
Sixth Judicial Circuit. }

The United States Circuit Court of Appeals for the Sixth Circuit.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, OHIO, Plaintiff,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.

To R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals, for the sixth circuit, to be holden at the city of Cincinnati, in said circuit on the 4th day of Feb'y, next, pursuant to an appeal of said cause filed in the clerk's office in the circuit court of the United States for the northern district of Ohio, wherein said The Mercantile National Bank is plaintiff and you are defendant, to show cause if any there be, why the judgment rendered against the said plaintiff, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 5th day of January, in the year of our
522 Lord one thousand nine hundred, and of the Independence of the United States of America, the one hundred and twenty-fourth.

WM. H. TAFT,
U. S. Circuit Judge.

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

Received this writ on the 27th day of January, 1900, and on the same day I served the same at Cleveland, on the within-named R. S. Hubbard, as treasurer of Cuyahoga county, Ohio, by delivering a true and certified copy thereof to P. H. Kaiser, county solicitor, and the attorney of record for said defendant.

M. A. SMALLEY,
U. S. Marshal,
By W. S. SNYDER, *Deputy.*

Fees.

Service	$2 00
Travel	06
Total	$2 06

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE MERCANTILE NATIONAL BANK OF Cleveland, Ohio, *vs.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio. } No. 5714. Chancery.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages embraced in volume 3 contain a full and true copy of the depositions of Peter H. Fahey, G. N. Calvert, S. C. Hale, Frank J. Smith, Charles L. Murfey, W. D. Guilbert, G. W. Taylor, exceptions to master's report, exceptions and stipulations, and there is annexed to and transmitted with such record, the citation issued and allowed in the above cause.

523 In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at Cleveland, in said district, on this 31st day of January, A. D. 1900, and in the 124th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk*,
By JNO. VAN NOSTRAN, *Deputy*.

521 And afterwards, to wit, on the 7th day of February, A. D. 1900, the following appearance was filed.

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1899.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Appellant, *vs.* R. S. HUBBARD, as Treas. of Cuyahoga Co., Appellee. } No. 817.

To the clerk of said court:

Please enter our appearances as counsel for the appellant.

W. W. BOYNTON.
NORTON T. HORR.

And afterwards, to wit, on the 5th day of April, A. D. 1900, the following stipulation was filed.

United States Circuit Court of Appeals, Sixth Circuit.

THE MERCANTILE NATIONAL BANK OF Cleveland, Appellant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Appellee.
} No. 817. Stipulation.

It is hereby stipulated by and between the appellant and the appellee that the rule days for filing printed briefs in this cause may be extended provided the court consents thereto, as follows: The appellant to file its brief by May 12th, 1900, and the appellee to file his printed brief by June 9th, 1900.

W. W. BOYNTON AND
NORTON T. HORR,
Attorneys for Appellant.
525 SMITH W. BENNETT,
Attorney for Appellee.

And afterwards, to wit, on the 8th day of May, A. D. 1900, the following order was made.

MERCANTILE NATIONAL BANK
vs.
R. S. HUBBARD, Treasurer.
} # 817. Lurton, Day & Severens.

The motion of Mr. Smith W. Bennett for an extension of time to May 22nd inst. to file his brief is granted.

And afterwards, to wit, on the 22d day of May, A. D. 1900, the following order was made.

MERCANTILE NATIONAL BANK
vs.
R. S. HUBBARD, Treas., etc.
} # 817. Lurton, Day & Severens.

This cause coming on to be heard this day was argued by W. W. Boynton for the appellant and by Smith W. Bennett for the appellee and submitted.

And afterwards, to wit, on the 10th day of December, A. D. 1900, the following decree was entered.

526 *Decree.*

United States Circuit Court of Appeals for the Sixth Circuit.

MERCANTILE NATIONAL BANK
v.
R. S. HUBBARD. } No. 817.

Appeal from the circuit court of the United States for the northern district of Ohio.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause be and the same is hereby reversed with costs and the cause is remanded to the said circuit court for further proceedings in accordance with the opinion of this court.

Approved:

DAY.

527 And afterwards, to wit:—on the 13th day of December, A. D. 1900, the following application for appeal was filed.

In the United States Circuit Court of Appeals for the Sixth Circuit.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant. } No. 817. In Equity.

Application for Appeal.

The defendant says that conceiving himself aggrieved by the decree made and entered on the tenth day of December, A. D. 1900, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

P. H. KAISER,
County Solicitor,
FREDERICK L. TAFT,
Ass't County Solicitor,
J. M. SHEETS,
Att'y General of Ohio,
Solicitors for Defendant.

SMITH W. BENNETT, *Of Counsel.*

December 13th, 1900.

The foregoing appeal is allowed.
December 13th, 1900.

H. F. SEVERENS,
Circuit Judge.

528 And afterwards, on the same day to wit, on the 13th day of December, A. D. 1900, the following assignment of errors on appeal was filed.

In the United States Circuit Court of Appeals for the Sixth Circuit.

THE MERCANTILE NATIONAL BANK OF CLEVELAND, Complainant,
vs.
R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Defendant.

Assignment of Errors on Appeal.

And now on the 13th day of December, A. D. 1900, came the said defendant by his solicitors and says that the order and decree in said cause rendered by the United States court of appeals for the sixth circuit, is erroneous and against the just rights of said defendant, for the following reasons:—

First. The court erred in reversing the order and decree of the said circuit court of the United States for the northern district of Ohio.

Second. The court erred in finding for the said complainant and against the said defendant.

Third. The court erred in holding and deciding that the former adjudication between the complainant and treasurer of Cuyahoga county, Ohio, in 1887, 1893 and 1894, shown by the record
529 thereof put in evidence, was conclusive against the rights of the defendant herein, whereby it concluded the said defendant from refusing to allow the shareholders of the said complainant to deduct their *bona fide* indebtedness from the value of their share in fixing the value of the latter for taxation.

Fourth. The court erred in holding and deciding that the former adjudication between the complainant and treasurer of Cuyahoga county, Ohio, in 1897, 1893 and 1894, as shown by the record, was conclusive of the rights of the shareholders of the complainant to deduct their *bona fide* indebtedness from the value of their shares in fixing the value of the same for taxation.

Fifth. The court erred in holding that the tax assessed against the shareholders of the complainant is greater than ought to have been assessed under the law.

Sixth. The court erred in holding that the allowance of various exemptions from taxation of money capital in the hands of individual citizens of Ohio as set forth in the complainant's bill of complaint, under the laws of the State of Ohio, result in and make an unjust and unlawful discrimination against moneyed capital invested in national bank shares, and in violation of the restrictions of section 5219 of the Revised Statutes of the United States.

Seventh. The court erred in holding and deciding that the action of the State board of equalization for banks, in increasing the valuation fixed by the auditor, was void for want of jurisdiction
530 to act at the time the board took the action complained of, and in enjoining the tax levied and assessed on the amount so added to the valuation of the auditor by the State board for the equalization of banks.

Eighth. The court erred in holding and deciding that the action of the State board for the equalization of banks, in increasing the valuation of complainant's shares, was invalid for want of notice to the bank or its shareholders, of the time said board would consider the question of the sufficiency of the auditor's valuation and affording them an opportunity for a hearing.

Ninth. The court erred in holding and deciding that the equities of the cause were with the said complainant, because the finding of the master and the evidence taken in said cause expressly show that the true value in money of complainant's shares after deducting the value of the real estate of said bank, as it stood on the duplicate upon the day that the statement was filed with the county auditor by the cashier of said complainant bank, was far in excess of the valuation placed on complainant's shares by said State board of equalization for banks, and thereby complainant's shares were listed for taxation at a far less valuation than the money capital of all other persons within said Cuyahoga county and the State of Ohio.

Tenth. The court erred in holding and deciding that the complainant bank had the right to deduct its *bona fide* indebted-
531 ness from the valuation of its shares, and thus decrease the valuation of such shares before listing the same for taxation.

Eleventh. The court erred in sustaining the exceptions of the complainant to the decree of the circuit court, and in rendering judgment for the complainant.

P. H. KAISER,
County Solicitor.
FREDERICK L. TAFT,
Ass't County Solicitor.
J. M. SHEETS,
Att'y General of Ohio.

SMITH W. BENNETT,
Of Counsel for Defendant.

And afterwards, and on the same day to wit, on the same day, the following bond was filed.

532 *Bond on Writ of Error or Appeal.*

Know all men by these presents, that we, M. A. Lander, as treasurer of Cuyahoga county, Ohio, as principal, and Frederick L. Taft, as sureties, are held and firmly bound unto The Mercantile National Bank of Cleveland, Ohio, in the full and just sum of five hundred dollars to be paid to the said The Mercantile National Bank of Cleveland, Ohio, its certain attorneys, executors, administrators or

assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirteenth day of December, in the year of our Lord one thousand nine hundred.

Whereas, lately at a session of the United States court of appeals for the sixth circuit, in a suit depending in said court, between Mercantile National Bank of Cleveland, Ohio, and R. S. Hubbard as treasurer of Cuyahoga county, Ohio, a decree was rendered against the said M. A. Lander, successor to R. S. Hubbard as treasurer of Cuyahoga county, Ohio, and the said M. A. Lander, successor to R. S. Hubbard as treasurer of Cuyahoga county, Ohio, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Mercantile National Bank of Cleveland, Ohio, citing and admonishing it to be and appear at a session of the United States Supreme Court to be holden at the city of Washington, in said circuit, on the — day of —— next.

Now, the condition of the above obligation is such, that if the said M. A. Lander, as successor of R. S. Hubbard as treasurer of Cuyahoga county, Ohio, shall prosecute appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

M. A. LANDER, [SEAL.]
As Treasurer of Cuyahoga County, Ohio,
By P. H. KAISER AND [SEAL.]
F. L. TAFT, [SEAL.]
His Solicitors.
FREDERICK L. TAFT. [SEAL.]
SMITH W. BENNETT.

Sealed and delivered in presence of—
—— ——.

Approved by—
H. F. SEVERENS,
Circuit Judge.

533 STATE OF OHIO, } ss:
Hamilton County, }

Frederick L. Taft and Smith W. Bennett, sureties on the appeal bond of the defendant, in a cause now pending in the circuit court of appeals for the sixth circuit, entitled, The Mercantile National Bank of Cleveland, Ohio, plaintiff, against, R. S. Hubbard, treas'r of Cuyahoga Co., Ohio, wherein appeal is taken to the Supreme Court of the United States, being duly sworn depose and say: That they and each of them are freeholders within the State of Ohio, and that they and each of them, are worth more than double the amount of said bond for which they stand as sureties, over and above the amount of all incumbrances or indebtedness.

FREDERICK L. TAFT.
SMITH W. BENNETT.

Sworn to before me and signed in my presence, this 13th day of December, A. D. 1900, by the said Fred'k L. Taft and Smith W. Bennett.

B. E. DILLEY,
Dep. Clk U. S. Cir. Court — Appeals.

And afterwards, to wit, on the 28th day of December, A. D. 1900, the following opinion was filed:

534 United States Circuit Court of Appeals, Sixth Circuit.

THE MERCANTILE NATIONAL BANK of Cleveland, Appellant, *v.* R. S. HUBBARD, as Treasurer of Cuyahoga County, Ohio, Appellee.	No. 817. Appeal from the Circuit Court of the United States for the Northern District of Ohio.

Submitted May 22, 1900; decided Dec. 10, 1900.

Before Lurton, Day, and Severens, circuit judges.

The bill in this case sought to restrain the collection of certain additional taxes imposed on shares of stock in the bank by virtue of an order of the State board of equalization for the State of Ohio for the year 1897. It was also sought to enjoin the collection of the tax levied upon said shares held by certain stockholders upon the ground that the stockholders named were, on the taxing day of that year, lawfully indebted to others in *bona fide* debts in excess of all their other credits in a sum equal to or exceeding the value of the shares of appellant's stock so held by them. It is also claimed that the refusal to permit such reduction was a violation of sec. 5219 of the Revised Statutes of the United States restricting the rate of taxation on shares of national banks to that assessed upon other money capital in the hands of individual citizens of the State. It was further alleged that said shareholders were entitled to such deduction on the ground that their right thereto had theretofore been adjudicated by the circuit court in actions between the appellant and the then treasurers of Cuyahoga county, which adjudications were in full force and operation, were between the same parties and involved the same subject-matter. The case was referred to a special
535 master, and his report is fully set forth in the record. Upon this appeal two propositions are urged upon the attention of the court. 1. Alleged error in the action of the circuit court in holding that the increase by the State board of equalization, without notice, afforded no ground of relief. 2. Error in the failure of the court to sustain the bill on the ground of former adjudications as set up in the record and disclosed in the testimony. As to the claim of *res adjudicata* the facts sufficiently appear in the opinion of the court upon that subject. As to the claim that the State board of equalization met and acted without notice, the master finds the following facts:

"Sixth. Said county auditor made out and transmitted to the annual State board of equalization for incorporated banks, a copy of the report so made by the cashier of complainant bank, together with the valuation of such shares as so fixed by him, on the 19th day of July, 1897. There was attached to said report a copy of the report of the Mercantile National Bank of Cleveland, Ohio, to the Comptroller of the Currency made next prior to the second Monday of May, 1897, to wit, May 14, 1897.

"Seventh. That the said board of equalization for incorporated banks, composed of the governor, auditor of State and attorney general, convened on the third Tuesday, being the 15th day of June, 1897, at the office of the State auditor, as required by section 2808, Revised Statutes of Ohio, and organized by the election of the governor as president of the board, and G. W. Taylor, chief clerk, in the office of the auditor, as secretary, and adjourned at the call of the secretary, transacting no other business at that meeting; that the members composing said board next met on the 7th of September, 1897, but took no action relating to the valuation of shares of the plaintiff, and adjourned; that two members of said board, with said secretary, met on the 10th day of September, 1897, but took no action relating to the shares of the plaintiff bank, and adjourned; that on the 20th day of September, 1897, the members of said board met, but took no action relating to the valuation of the shares of plaintiff, and adjourned; that on the 4th day of December, 1897, the members of said board next met at the call of the State auditor to consider unfinished business. The record of the meetings of said board, as originally made by the secretary, shows that at the meeting held June 15, 1897, September 10, 1897, September 20, 1897, the 'board adjourned.' At the meeting held December 4, 1897, the secretary was directed to amend the record as to each of said above-named adjournments by adding these words: 'Amended to read, "adjourned to meet at the call of the president of the board. Asa S. Bushnell, governor of the State,"' and thereupon said board adjourned *sine die*. Some time after December 4, 1897, the record was amended by the secretary as directed by said board. At none of said adjournments was a day named for the next meeting.

536 "Eighth. At said meeting on December 4, 1897, without complaint from any one, the members of said board assuming to act as a board, increased the valuation of the shares of the plaintiff from $519,320.00, so fixed by the county auditor, to $642,320.00, and on the 6th day of December certified said valuation to the auditor of Cuyahoga county to be by him placed on the treasurer's duplicate, which was accordingly done; that neither of said meetings of the members of said board following the third Tuesday of June, 1897, was called by said secretary, and no notice or information of any kind or opportunity to be heard was given by said board, its secretary or any other person to said bank, or any of its officers, directors or shareholders of any or either of said meetings, except such as the statute gave them, to wit: section 2808, Revised Statutes, and succeeding sections; nor did they, or either of them, have any notice of any of said meetings or appear thereat,

and the first information that said bank or any of its shareholders had or received of any action of the board or of the purpose to increase the value of the shares so fixed by the auditor was on the 7th day of December, 1897, after the action of the board was had and such information was conveyed by letter from the auditor of the county to the cashier of the plaintiff, notifying him of the completed action of the board; that thereupon, said bank and its shareholders, through the officers and agents of the bank duly authorized, applied to the members of said board for a hearing, and was notified that two of the members of said board were out of the State, and that December 28th was as early as the bank officers could be received; that on said day the officers of said bank on behalf of said shareholders duly authorized, met the members of said board at Columbus, and made application for a hearing respecting the valuation of said shares and the action of said board, and notified said members of said board that such increase made on the shares of said bank was excessive and unwarranted, and protested against the same, but said hearing was denied, the members of said board declaring that the board had adjourned *sine die* and could not reconvene as a State board of equalization for banks to consider any claim or application respecting the value of said shares.

"At the time the persons who had composed the State board of equalization for banks, and who are the same persons required to act under section 167 of the Revised Statutes of Ohio, offered to convene and organize under said section 167 to consider the case of the various plaintiff banks at such time as might be convenient for the representatives of the Cleveland banks to appear. Some doubt was expressed by some of the members of the committee that the board would not have the power under section 167 to afford as full relief as the board of equalization and only one of the Cleveland banks appeared before the board when organized under section 167, viz., the First national bank, the others declined to appear.

"Ninth. That the said auditor of said county of Cuyahoga,
537 upon the receipt of the certificate from said State board of equalization entered said valuation of $642,320.00 upon the tax duplicate of said county for the year 1897, and assessed against the same taxes at the rate of 3.03 cents on each dollar, and which amounted on said valuation to $19,462.30. The taxes on said bank shares at the said rate of 3.03 on each dollar, if assessed on the valuation of $519,320.00, as fixed by the auditor of Cuyahoga county, would have amounted to the sum of $15,735.39."

The master reported as his conclusion of law that the attempted increase was void for want of notice to the tax-payer of the meeting at which the increase was ordered by the board.

DAY, circuit judge, after stating the foregoing facts, delivered the opinion of the court.

The learned circuit judge, in disposing of the matter of the increase of the valuation of the stock in complainant bank made by the State board of equalization for incorporated banks, expressed the opinion that the tax actually assessed, being no greater than

ought to have been assessed considering the market value of said stock, the complainant was not in a position to ask a court of equity to intervene, and he therefore declined to consider the irregularity in the action of the State board. The statute of Ohio, section 2808, fixes the time for the meeting of the State board. This board is required to meet on the third Tuesday of June, annually, at the office of the auditor of State, and examine the returns of said banks to the county auditors, and the value of said shares as fixed by the county auditors, as the same shall have been reported by the county auditors to the State auditor. At this meeting it was provided, section 2809, that said board shall hear complaints and equalize the value of said shares according to the rules prescribed in title 13 for valuing and equalizing the values of real and personal property. Looking to the other sections of the statute contained in this title we find that it is provided in section 2804 that the annual county board shall not increase or reduce the valuation of any real estate except in cases of gross inequality, and then only upon reasonable notice to all persons directly interested, and an opportunity for a full hearing upon the question involved. Section 2807 provides, speaking of the powers of city boards to hear complaints, that "no such addition shall be made to such list returned under oath without the board having first given reasonable notice to the person or persons whose personal property is sought to be added to, or the valuation thereof increased, to appear before
538 said board at a time and place to be fixed by said board, and show cause why such addition should not be made, or why such valuation should not be increased." These statutes construed together, we think, require that the State board of equalization, before it can increase the value of shares of incorporated banks, shall give notice to persons affected by its action. Undoubtedly the notice prescribed by the statute for the meeting of the board on the third Wednesday in June is sufficient notice to the parties that the board will meet on that day, and tax-payers are bound to take notice of the time and place fixed by law. This was the holding of the supreme court of Ohio in the case of Hambleton *v.* Dempsey, 20 O. 168. But in the present case it appears from the finding of the master that on a day appointed by law for the meeting of the board, it convened at the office of the State auditor, but took no action at that meeting except to adjourn to meet at the call of the secretary. Subsequent meetings were held on the 7th, 10th and 20th of September, at none of which was any action taken as to the valuation of the shares of complainant bank. At none of these meetings was an adjournment had to a day certain. At the meeting of December 4th, an amendment of the record was made to show that adjournments were to meet at the call of the president of the board. At the meeting of December 4th, the valuation of the shares of the bank was increased from $519,320.00 to $642,320.00, and no notice was given of any of these meetings. We are of opinion that the statutes of Ohio requiring notice must be complied with in order to give jurisdiction to such a tribunal as the State board of equalization to act upon the property rights of holders of bank stock. An examination of the board record

before December 4th would have shown the tax-payer that the board had adjourned without action upon his stock. Nothing recorded notified him of any time or place where he might appear and present his case to the board. In the absence of a statutory requirement we are of opinion that such action could not be taken as would affect a citizen's property rights by increasing the value of his property for taxation without giving him an opportunity to be heard. In Desty on Taxation, vol. 1, at page 597, it is said:

"It is a fundamental principle that before a person can be deprived of a right, even by a judicial suit, he must have notice and reasonable opportunity to be heard in defense of his rights.

"A tribunal invested by law with power to affect the prop-
539 erty of a subject is bound to give such subject an opportunity of being heard before it proceeds. The rule is of universal application, and is founded on the plainest principles of justice."

In Hoevy *v.* Elliot, 167 U. S. 409, Mr. Justice White said:

"Wherever one is assailed in his person or his property, there may he defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal."

Numerous other authorities might be cited to sustain this proposition, but we deem it unnecessary to amplify the opinion upon this branch of the case. It is an elementary principle of law that tribunals vested with power to affect the property of citizens must act with notice. He must have opportunity to be heard, and a statute which undertakes to give the right to such tribunals to interfere with property of citizens, without hearing, deprives him of a privilege long secured by the common law, and does not afford him due process of law. Nor do we think it an answer to this proposition to say that the assessed value was no higher than the true value of the shares in money. No increase in the value of shares already assessed can be *be* made without jurisdiction of the party affected. Section 5848 of the Ohio statutes expressly provides that the illegal levy of taxes and assessments, or either, may be enjoined. Rights conferred by the statute will be enforced in the Federal courts. Cummins *v.* National Bank, 101 U. S. 153; Grether *v.* Wright, 23 C. C. A. 498.

The statute gives the board no jurisdiction to increase the assessment without notice; therefore, the collection of the tax levied as a result of the board's action is illegal, and, under the Ohio statute, can be enjoined. We are of opinion, therefore, that for want of notice to the tax-payer the action of the State board of equalization in increasing the valuation of the shares of complainant for taxation was illegal and void, and the circuit court erred in reaching the opposite conclusion.

As a further ground for reversal it is claimed that the matter in controversy between the parties as to the right of stockholders in the complainant bank to set off indebtedness against their holdings

of stock is *res adjudicata* between the parties, and to establish
540 this proposition the record in the case of The Mercantile National Bank of Cleveland, Ohio, *v.* Whitbeck, is introduced in which a final decree was entered in the circuit court of the United States for the northern district of Ohio, on the 8th day of April, 1887. It is alleged that in that case the question was made as to the right of the stockholders to set off their indebtedness against their stock holdings and was conclusively determined, it having been therein held that the tax laws of Ohio, permitting holders of other moneyed capital to set off their indebtedness was a discrimination against the holders of national bank stock within the meaning of section 5219, Revised Statutes of the United States. Since the decision of the supreme court in the case of Chapman *v.* National Bank, 56 O. S. 310, and the decision of the Supreme Court of the United States in the same case affirming the decision of the supreme court of Ohio—Bank of Wellington *v.* Chapman, 173 U. S. 205—it is settled that the holder of national bank shares, in the absence of proof of discrimination in favor of capital coming into competition with that invested in shares in national banks, has no right to deduct the amount of his *bona fide* debts from such shares, but is legally bound to pay the tax upon the assessed value thereof without deduction on account of such debts. No attack upon this position is made in the argument of this suit in behalf of the appellants, but it is insisted that the matter is *res adjudicata* because of the decision in the suit of appellant against Whitbeck, treasurer. That case is reported in 127 U. S. 193. The bill in the case was based on two grounds—to restrain the treasurer from collecting taxes because bank shares had, in the county of Cuyahoga, by certain means set forth in the bill, been assessed at sixty-five per centum of their value, whereas, other capital of citizens in that county was assessed at sixty per centum of its value. This the Supreme Court held to be unlawful discrimination against the holders of such shares. Upon the question raised here, it is necessary to examine the manner in which it was made and the nature of the decree granting a perpetual injunction. From the record in evidence in the Whitbeck case, we find that the bill avers, among other things:

"Your orator further avers that by section 2730 of the Revised Statutes of Ohio it is enacted that 'the term "credits" shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due to, or to become due to the person liable to pay taxes thereon,
including deposits in banks or with persons in or out of this
541 State, other than such as are held to be money as hereinbefore defined, when added together (estimating every such claim or demand at its true value in money) over and above the sum of legal *bona fide* debts owing by such person;' and by section 2736 of the Revised Statutes of Ohio, it is provided that every person required to list property for taxation shall deliver to the assessor annually a statement of all personal property, money and 'credits' and other property in his possession or under his control on the day

preceding the second Monday of April of that year, which he is required to list for taxation; and by section 2737, it is provided that such statement, among other things, shall truly set forth the amount of 'credits' possessed by such person as that term is by the above-recited statute defined. Your orator says that a large amount of moneyed capital in the hands of individuals invested in promissory notes and other obligations and credits is by the aforesaid provision allowing deduction of legal, *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares, as to which no exemption, or deduction, is provided for by the laws of the State, which discrimination is in direct violation of the restrictions of said section 5219 of the Revised Statutes of the United States."

Then follow allegations as to the indebtedness of certain shareholders; the right is claimed to deduct the same from the value of their shares of bank stock. Again in summing up the grounds of relief, complainant says:

"Your orator avers and insists that the taxes so levied and assessed against it on account of its said shares of stock are unjust, illegal and void for the following, among other reasons: 1st. That said tax is levied and assessed against your orator directly and is in violation of the act of Congress under which your orator is incorporated. 2d. That the laws of Ohio authorize and permit the owner of credits to deduct therefrom all debts owing by him and requires him to list for taxation only the excess of credits over his indebtedness, and that such is the uniform practice throughout the State, and that under the laws of the same State the owner of capital stock of your orator is denied the right to deduct therefrom his indebtedness, but is required to list for taxation the whole number of shares owned by him, and not simply the excess over his indebtedness, and your orator insists that such discrimination results in the taxation of your orator's stock at much greater rate than is assessed upon other moneyed capital in the hands of individual citizens of Ohio."

In this statement we find the averment that the owners of credits are permitted to deduct their indebtedness while the owners
542 of bank stock are not thus favored. But the term "credits" as used in this part of the bill must be taken in connection with the allegations of the bill which state the definition given by the statutes of Ohio of the term "credits," which shows such term to include the excess of sums of a limited class of moneyed capital over and above the indebtedness of individuals and not to include moneyed capital in general. Upon this branch of the bill the question presented was whether the deduction permitted for the purpose of taxation of indebtedness from the limited class of capital named in the statute was an unlawful discrimination against the shareholders in national banks within the meaning of the Federal statute. The record shows that the decree making a general finding in favor of complainant in the Whitbeck case was based on the answers made to a certificate of division of opinion in the circuit court, certifying certain questions to the Supreme Court, among others, whether

the taxation of national bank shares in the State of Ohio in 1885, without permitting the shareholders to deduct from the assessed value of his shares the amount of his *bona fide* indebtedness existing on the Wednesday next preceding the second Monday in April, 1885, is a discrimination forbidden by act of Congress, the said shareholders not having deducted said *bona fide* indebtedness from any credits owned by them at either of said dates. Whether the demand for such deduction, first made on the 17th day of December, 1885, was sufficiently early to entitle complainant's shareholders thereto. In this certificate of division of opinion it is also stated that the laws of Ohio make no provision for the deduction of the *bona fide* indebtedness of any shareholder from the shares of his stock, and provide no means by which said deduction can be secured. Upon this certificate of division of opinion Whitbeck *v.* National Bank was decided in the Supreme Court. It was therein held that the increase of valuation of the shares of stock of complainant from sixty per centum to sixty-five per centum was a discrimination such as is forbidden by section 5219 of the Revised Statutes of the United States. In deciding the other proposition the Supreme Court assuming that the Ohio statute regulating assessments for taxation allow an owner of moneyed capital other than shares in a national bank to have a deduction equal to his *bona fide* indebtedness from the amount of the assessment of the value of such moneyed capital, but that no similar provision was made in favor of shares in a national bank, held the owners of such shares are entitled to a similar reduction and that the right to make the demand therefor was not lost because of the delay in making the de-
543 mand until after the process of equalization of the value of the shares for taxation is completed, and the tax duplicate is delivered to the treasurer for collection. The question made in the bill was whether the deduction of indebtedness from a limited class of capital as defined in the Ohio statute was an unlawful discrimination. The proposition decided by the Supreme Court was, assuming the Ohio statute to be different from what the bill declared it to be, and that it provided that moneyed capital, with the single exception of national bank shares, might have such deduction, it afforded an unlawful discrimination against such shareholders within the meaning of the Federal statute. In other words, the Supreme Court decided the question upon an erroneous assumption, not based on the allegations in the bill of complaint or certified in the questions submitted. The general decree in favor of the bank in that case can be supported by the unlawful discrimination in the increased valuation of the shares of the bank. The real question made under the statutes of Ohio, as they in fact existed, was not passed upon by the Supreme Court of the United States in that case. We think we have a right to look to the opinion to ascertain what was decided by the Supreme Court. Closing the same, Mr. Justice Miller says:

"These principles require the affirmance of the decree of the circuit court; and while there will be found in them a sufficient answer to the questions certified by the judges of that court, we do

not think it necessary to make a more specific answer to each of them. The decree is affirmed."

The decree could stand, under the finding, in favor of the bank upon the other proposition. We think the Supreme Court has decided a proposition not made in the bill, and not set forth in the certificate of division of opinion. While it is said in that certificate that the laws of Ohio make no provision for deduction of debts by shareholders of national banks, there is no statement that such holders are the only owners of moneyed capital not entitled to such deduction. In the case of the First National Bank *v.* Chapman, 173 U. S. 219, the Supreme Court say of the Whitbeck case:

"It is stated, however, that this specific question has been otherwise decided in Whitbeck *v.* Bank, 127 U. S. 193. If this were true, we should be guided by and follow that decision. Upon an examination of the case it is seen that the court gave chief attention to the question whether an increase in the value of the shares in national banks made by the State board of equalization, from 60 per cent. of their true value in money, as fixed by the auditor
544 of Cuyahoga county, to 65 per cent., as fixed by the board (other property being valued at only 60 per cent.), amounted to such a discrimination in the taxation of the shareholders of such banks as is forbidden by the Federal statute. It was held it did.

"Coming to the question of the deduction of *bona fide* indebtedness of shareholders, the court assumed that under the statute of Ohio owners of all moneyed capital, other than shares in a national bank, were permitted to deduct their *bona fide* indebtedness from the value of their moneyed capital, but that no provision for a similar deduction was made in regard to the owner of shares in a national bank; and it was held that the owners of such shares were entitled to a deduction of their indebtedness from the assessed value of the shares as in the case of other moneyed capital. The point to which the court chiefly directed its attention related to the question whether a timely demand had been made for such deduction of indebtedness. It was held that it was made in time, for the reason that the court below expressly found that 'the laws of Ohio make no provision for the deduction of the *bona fide* indebtedness of any shareholder from the shares of his stock, and provide no means by which such deduction could be secured.' As a demand at an earlier period would have been useless, the court held it unnecessary.

"An examination of the statute of Ohio in regard to taxation shows that debts can only be deducted from credits, and how much of credits is moneyed capital is unknown. The case is not authority adverse to the principle we now hold.

"For the reasons already stated, we think the judgment in this case should be affirmed."

In view of the foregoing comments on the decision in the Whitbeck case, and the erroneous assumption therein of the character of the Ohio statute, we are not prepared to say that the judgment in that case was *res adjudicata* as to the rights of complainant's stockholders to deduct their debts from their shares of national bank stock.

A different question is presented by the allegations of former adjudication in the bills filed in 1893 and 1894. In those bills it was sought to enjoin the treasurer from collecting taxes upon the shares of complainant bank without permitting deduction for *bona fide* debts, it being averred that by section 2739 of the Revised Statutes of Ohio, it is enacted that the term "credits" "shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable things or for labor or service due or to become due to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this State other than such as are held to be money as hereinafter defined, when added together (estimating every such claim or demand at its true
545 value in money), over and above the sum of legal *bona fide* debts owing by such persons."

"The complainant further says that a large amount of moneyed capital in the hands of individual citizens of the State, and of said county of Cuyahoga and State of Ohio, city of Cleveland, invested in promissory notes and other legal obligations, securities, claims and demands, is, by the aforesaid provision allowing a deduction of legal *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares, as to which no exemption or deduction is provided for by the laws of the State, which discrimination is in direct violation of the restrictions of section 5219 of the Revised Statutes of the United States, which provides that: 'The taxation shall not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such State.'"

This is a distinct allegation that this statute works an unlawful discrimination in favor of the holders of credits under the laws of Ohio, in permitting the holders of a class of capital to have a deduction denied to holders of shares in national bank stock. It was further alleged in those bills as follows:

"The complainant further avers heretofore, to wit, at a date prior to the April term of this court, in the year 1887, the complainant brought suit against Horatio N. Whitbeck, as treasurer of said Cuyahoga county, who then held such office, to enjoin the collection of the excessive taxation of shares of said complainant, growing out of the refusal of the taxing officers of said county to allow the deductions of *bona fide* debts of stockholders from the assessed value of said shares, said Whitbeck then representing the same interest, sustaining the same relations and charged with the same duties to the public as does the present defendant; and in said suit this complainant alleged by its bill the refusal by the then auditor of said county to allow a deduction of *bona fide* debts of the shareholders from the value of shares of stock of said complainant, owned in large part by the same stockholders as those above named, and in which action said treasurer of said county, admitting said refusal to allow said deduction, so joined issue as to present the question of the rights of said owners of said shares, to said deduction, in view of the laws of Ohio; and the said laws being the same as the pres-

ent laws of the State, and those under which the taxing officers of said county acted in 1892 and 1893, in making assessments and in refusing deductions to be made of *bona fide* debts of stockholders from the valuation of said shares; and the complainant says that upon the issues so joined, the said court, at its April term, A. D. 1897, held and determined that said
546 shareholders were by law entitled to said deduction of *bona fide* debts from the value of their said shares to an equal amount fixed for taxation; and in said action the court gave judgment perpetually enjoining said treasurer from collecting or attempting to collect any tax or assessment on the valuation of said shares to an amount equal to said debts from which said deduction was sought to be made and disallowed by said auditor, on the ground that said disallowance was a discrimination against money invested in national bank shares, prohibited by the act of Congress; and the complainant alleges that said issue, so determined and adjudged, was between the same parties, involved the same subject-matter and legislation, and the judgment therein given remains wholly unreversed and is still in full force and operation."

The treasurer demurred to this bill, and the demurrer was overruled, the defendant electing to stand by his demurrer, a final decree was given enjoining the tax levied on the amount assessed equaling the shareholders' indebtedness, the allegations of the bill having been found to be true. The bill above quoted from was brought to enjoin the collection of the June taxes for 1893, and a like bill was filed to enjoin the collection of the December tax of the same year. A similar course of procedure was had, and the court found each and every allegation of the bill to be true and entered a decree accordingly.

The learned judge in the circuit court held that the former adjudications depended upon the discriminations of those years sued upon, in view of the taxation levied in each particular year upon bank shares and other capital in this State, and consequently the adjudications were only as to conditions of fact existing in those years, respectively. But these bills made the question as to the effect of the Ohio statute permitting indebtedness to be deducted from credits as the same were defined therein. The attack under those bills was upon the Ohio system of taxation as authorized by section 2730. It was set up that the statute, which was copied in the bill, discriminated against the holders of national bank stock in permitting indebtedness to be deducted from the demands named in the statute, and not against national bank stock. Credits, which are arrived at by permitting the debts to be deducted from certain capital, exist in the State every year. A discrimination as alleged was not based upon the operation of the law for any particular year, but upon the system of taxation applicable to every year. It would make no difference that in some years credits would make a greater volume of taxable property than in others, so far as the allegations of the bill in this respect are concerned. It is true, since the decision in the Chapman case, 173 U. S., 219, it is established that the
547 taxation of national bank shares — in the same manner as

other shares of capital stock in State banks, not giving them the privilege of deducting their indebtedness as is given to a limited class of capital in arriving at taxable credits, in the absence of a showing that such credits constitute so great a portion of the taxable property of the State in capital coming into competition with that invested in national bank shares as to amount to a discrimination against holders of such shares. But the principle of the decision in the Chapman case must not be confused with the right of a person to plead a former adjudication, if the former adjudication has the identical parties and questions determined to make its *res adjudicata*. We have shown what the allegations in respect to the permitted deduction under the Ohio law were in the bills filed in 1893 and 1894. In the present case the bill claims this discrimination in favor of the holders of credits, and is ample to permit proof and finding of facts which would support the allegations of the former bill. In the present case the master expressly finds:

"In the year 1897 a large amount of moneyed capital in the hands of individual citizens of the State, invested in promissory notes and other obligations and credits, was, by section 2730 of the Revised Statutes of Ohio, authorized to be exempted from taxation through the deductions therefrom of legal *bona fide* debts."

We may take judicial notice of the fact that the statute, at the time of the filing of the present bill, and the report of the master upon which the decree was entered, is the same as it was when the former decrees were given upon the bills of 1893 and 1894. Hanley *v.* Donohue, 116 U. S. 1; Gormley *v.* Bunyan, 138 U. S. 623. The United States statute, section 5219, preventing discrimination against holders of shares of national bank stock, is the same now as then, and has remained unchanged.

We find that upon this branch of the case the allegations and findings of the master bring the case within the allegations of the bills of 1893 and 1894. It is true the master finds other facts, from which he states he is unable to reach a conclusion which would show discriminations against national bank stock in favor of the classes of capital which come in competition therewith so as to give the complainant the right to an injunction within the principles laid down in the Chapman case. This does not affect the fact that he
548 makes a finding which fully supports the allegation of the bills filed subsequent to the Whitbeck case, and before the Chapman case was decided. We then have a former adjudication in which it was held, upon this branch of the bill, that the deduction allowed under section 2730, Revised Statutes of Ohio, worked a discrimination against the holders of national bank shares. This being the effect of that adjudication, it is decisive between the parties when applied to subsequent years, the statute remaining the same and the right of the party to the deduction being based upon the same principle, and arising from facts and conditions bringing the case within the right determined in the prior adjudication. This conclusion is supported by the decision of the Supreme Court of the United States in the case of New Orleans *v.* Citizens' Bank, 167 U. S. 371. In that case it was held that the judgment of a court in Lou-

isiana of superior jurisdiction upon the issue, duly raised by the pleadings, whether the bank was exempt by contract with the State from taxes assessed against it for particular years, concluded that question, as between the same parties and their representatives, in respect of taxes assessed against it for subsequent years. The court said:

"The proposition, that because a suit for a tax of one year is a different demand from the suit for a tax for another, therefore *res adjudicata* cannot apply, while admitting in form the principle of the things adjudged, in reality substantially denies and destroys it. The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties and their privies."

The opinion of Mr. Justice White in that case is a thorough and elaborate discussion of the doctrine under circumstances closely akin to those of the present case.

One ground of relief in the bills of 1893 and 1894 was predicated upon the former adjudication set forth in that respect in the parts above quoted. The demurrer confessed the allegations of the bills. Judgment rendered upon demurrer has been held by the Supreme Court of the United States as decisive as a verdict upon the same facts would be. Facts established by such an adjudication are conclusive between the parties and those in privity with them. Bissell *v.* Spring Valley Township, 124 U. S. 225. It is true that estoppels must
549 be certain, and if the confession of the demurrer left other parts of the bill not available here as a plea of *res adjudicata* which could support the former decree, the estoppel would not be shown. We have seen that the facts pleaded in the former bill as a basis of relief are identical with the facts as found by the master in this case. As to the plea of former adjudication, the bill distinctly alleged that the decree in the Whitbeck case had held the discrimination made by the Ohio statute to be unlawful within the statute of the United States, and that it had been adjudicated therein that national bank shareholders were entitled to deduct their debts from the value of their shares for the purposes of taxation. The treasurer saw fit to stand upon his demurrer. Within the principle established in the Chapman case, he might have made issues which would have produced a different result, but the question now is, Is this former judgment in full force so identical with the present case that the judgment therein is decisive upon the parties here? We think it is. It is said in Biglow on Estoppel, third edition, quoted with approval by Mr. Justice White in New Orleans *v.* Citizens' Bank, *supra*:

"Matters once determined in a court of competent jurisdiction may never again be called in question by parties or privies against objection, though the judgment may have been erroneous and liable to, and certain of, reversal in a higher court."

We, therefore, cannot escape the conclusion that the former adjudications in the cases of 1893 and 1894 are conclusive between

the parties, notwithstanding the subsequent decision of the Supreme Court in the Chapman case. In reaching a contrary conclusion, we think the master, as well as the circuit court, erred. The judgment will be reversed and the cause remanded with instructions to enter a decree in favor of complainant in accordance with the views herein expressed.

550 UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

United States Circuit Court of Appeals for the Sixth Circuit.

To Mercantile National Bank of Cleveland, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington D. C. *in* 23d day of January next, pursuant to an appeal, fil*l*ed in the clerk's office of the U. S. circuit court of appeals for the sixth circuit, wherein M. A. Lander as successor of R. S. Hubbard as treasurer of Cuyahoga county Ohio is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of December, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

H. F. SEVERENS,
Circuit Judge.

551 *Marshal's Return.*

THE UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, }

Received this writ at Cleveland Dec. 21, 1900, and on same day, at same place, I served the same by delivering a true and certified copy hereof and all endorsements thereon to the within-named Mercantile National Bank of Cleveland, Ohio, by handing a copy to C. L. Murfey, cashier of the above-named bank.

F. M. CHANDLER,
U. S. Marshal,
By F. M. FANNING, *Deputy.*

Fees.

Service	$2.00
Mileage	.06
Copying citation	.30
	$2.36

552 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record & the original citation in the case of The Mercantile National Bank of Cleveland *vs.* R. S. Hubbard as treasurer of Cuyahoga county No. 817, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 28th day of December, A. D. 1900.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No. 18,019. U. S. C. C. of appeals, sixth circuit. Term No. 227. Marcellus A. Lander as treasurer of Cuyahoga county, Ohio, appellant, *vs.* The Mercantile National Bank of Cleveland, Ohio. Filed January 12th, 1901.